

THE
TRIAL

36

Of the RIGHT HONOURABLE

^{Amesby}
RICHARD Earl of ANGLESEY,

FRANCIS ANNESLEY Esq,

AND

JOHN IANS Gent,

For an ASSAULT on the Honourable

JAMES ANNESLEY,

Daniel Mac Kercher, and Hugh Kennedy
Esq^{rs}. and *William Goofry* Gent.

BEFORE

THE Hon. RICHARD MOUNTENEY Esq;
Second Baron of His Majesty's Court of Exchequer;

AND

ST. GEORGE CAULFIELD Esq;

His Majesty's Attorney-General;

Justices of Assize for the *Leinster* Circuit:

On *Friday, Aug. 3, 1744*, at *Atby* in the County of *Kildare*.

CONTAINING

The Whole Evidence, as deliver'd by the Witnesses.

WITH

The SPEECHES and ARGUMENTS of the Court and Counsel, as they
were taken in Short-hand.

LONDON:

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(Price Two Shillings.)

(The Will of the said)

C. Smith, C. Davis, and A. Miller, and J. S. Smith,
Witness for J. and B. K. Smith, and J. S. Smith.

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were taken in front of the

The witnesses and the witnesses of the Court and the Court, as the

WITNESSES

The Will of the said, as delivered, as the Will of the

WITNESSES

On the 20th day of the month of the County of Kent.

Witness for the said Court:

His Majesty's Attorney General

ST. GEORGE'S COURT

AND

Second Baron of the said Court of Exchequer

THE HON. RICHARD MONTAGUE

BEFORE

His Majesty's Attorney General

Daniel MacKerel, and J. S. Smith

JAMES A. W. S. J. E. J.

For the said Court of Exchequer

W O W O W

AND

W O W O W

RICHARD E. J. S. J. E. J.

OF THE RIGHT HONORABLE

THE BIRTS

THE

TRIAL

OF THE RIGHT HONOURABLE

RICHARD Earl of ANGLESEY,

FRANCIS ANNESLEY, Esquire,

AND

JOHN JANS, Gent.

FOR

An ASSAULT on the Hon. James Annesley,
Daniel McKercher, and Hugh Kennedy, Esqs. and
William Goofry, Gent.

Counsel for the KING.

William Harward,
James McManis,
Cornelius Callaghan,
John Morton,
John Connor,
Thomas Fitzgerald,
Theobald W. Smith,
John McGarry,
Edmore Disney,
James Gratton,
Esquires.

Counsel for the TRAVERSERS.

Thomas Spring,
Thomas Morgan,
Edmund Malone,
Joseph Green,
Esquires.

FRIDAY, August 3, 1744.

The Court being sat at Eleven o'Clock, the JURY were called over, and answered to their Names; of whom the following Twelve were sworn, to try the Issue joined between the Parties.

John Digby, Esq;
Henry Dickson, Esq;
John Bayes, Esq;
Mr. Thomas Sberlack.
Mr. George Bradford.
Mr. William Lebar.

Mr. John Berry.
Mr. Samuel Mills.
Mr. Edward Harman.
Mr. James Tyrrell.
Mr. Thomas Tyrrell.
Mr. Edward Ward.

ANGUS BERNIE, one of the Persons indicted for the Assault, is called into Court, and appears.

Clk of the Court. You stand indicted, for assaulting William Goofry, Gentlemen, on the 16th of September last, do you submit or traverse?

Angus Bernie. I do submit.
Clk of the Court. You likewise stand indicted for assaulting Hugh Kennedy, Esq; do you submit or traverse?

Angus Bernie. I submit.
Clk of the Court. You likewise stand indicted as follows:

for assaulting Daniel McKercher, Esq; do you submit or traverse?

Clk of the Court. You likewise stand indicted for assaulting James Annesley, Esq; do you submit or traverse?

Angus Bernie. Submit.
Court. The Gentlemen of the Jury must have Pen, Ink and Paper.

County

of swearing of any of the former Attempts or Injuries of the highest Name that any Client has suffered.

Mr. Spring. My Lord, this is for no other Purpose but to inflame the Minds of the Jury, and to excite the Populace. There is no Injury, no Attempt of any kind, real or pretended, but that on the 16th that is to be considered by the Jury.

Caust. The Jury will be told by and by that the single Point they are to consider is the Fact of the Assault only. Go on, Mr. Harward.

Mr. Harward. I did mention that I would not enter into a Narrative of the former Attempts, but confine myself to the Passages of this Day. This Gentleman, as Son and Heir to the late Lord Altham, I hope the Council will give me the Liberty of telling who he is.)

Mr. Spring. There is no Occasion for that neither at this Time.

Caust. Go on, Sir, in stating the Case.

Mr. Harward. I say then, that Mr. Anneley, along with these other Gentlemen, (some of them Men of Profession) came into this Kingdom in the latter end of last Summer, in order to assert and sue for That, which he apprehended to be his Right, the *Angley Estate* in this Kingdom: Mr. Anneley had brought an Ejectment for Recovery of Part of it, lying in the County of *North*, which was then depending; and Lord *Angley* had notice of this, and knew the Friend these Gentlemen came of, to assist Mr. Anneley in his Affairs. He met them on the 14th at the *Carriage*, and the first thing (for I shall mention the Facts in order of Time, as they happen'd from the first to the third Day of the Races) the first Person that my Lord did the Honour to take notice of was Mr. *McKercher*. My Lord stood in a Circle of the Gentlemen of this Country, and of many of his own Antiquaries brought from another Country, and seeing this Gentleman, Mr. *McKercher*, who came to attend Mr. Anneley's Affairs, the first Thing that he was pleas'd to do was, to point to Mr. *McKercher*, and say, *See yonder that Rogue, that Squander'd, and that Villain McKercher; it is not above a Month ago, that he is now dress'd up like a Gentleman, since I saw him very lately Cloath'd hanging in Moonmouth-street in London.* Mr. *McKercher* (who is a Gentleman, and will appear in the Cause of this Trial to have Resolution of another kind) took no Sort of Notice of this Publick Insult, as it was not his Business to venture the Conduct and Success of his Friend's Affairs, in a rash hot Quarrel, but very prudently pass'd it calmly and quietly by. That Day, my Lord, nothing more that was remarkable did happen; this was upon a Wednesday, I think the 14th. On the 16th, as these Gentlemen, for whom I am Council, were all in a Knot, they and their few Friends kept close together upon this *Carriage*, which is of great Extent, many Miles over; but no Place whatever could serve my Lord *Angley's* Coachman, but to ride thro' and thro' them, to endeavour to trample down these Gentlemen and their Horses with his Coach and Six, and hunted them where-ever they mov'd; and whenever he came near Mr. Anneley, this Coachman (you will guess easily by whole Directions) used to cry out, *There he is, there's the Shabby, that your Ball; and some other opprobrious Language* I can't now recollect. And by this repeated Insult of driving these Gentlemen wantonly from Place to Place and calling out to them in that opprobrious Manner, this Man was determin'd with his Coach and Six to be upon the Back of them, where-ever they remov'd to avoid him. My Lord, he is indicted also but does not appear, tho' he still is the Coachman of Lord *Angley*, his Name is *Joseph Lawson*. My Clients, my Lord, observing this Behaviour, like prudent Men, they began to be more than ordinary upon their Guard, and to fear the worst. As they were but few and Strangers in the

Kingdom, they thought that sticking together would be the only Means left in their Power to preserve them: But all Precautions were in vain. My Lord observing, that neither abusive Language, Words, which must have pierc'd to the Heart of the meanest Vassal, nor the Coachman's driving his Coach at them, could have rais'd these Gentlemen's Tempers to take any notice of it, another Expedient occur'd to my Lord, to put his Purposes in execution. Mr. *McKercher*, upon these repeated Abuses of himself and of Mr. Anneley, having waited upon Lord *Angley* with all the Address and good Manners imaginable, told him (without making the least mention of what happen'd to himself the Day before) that he was come to acquaint his Lordship with the *Reclamations* of a Coachman of his to a Gentleman in the Field, and beg'd his Lordship would do in it what became a Nobleman and Gentleman. Lord *Angley* ask'd, *Who the Gentleman was?* He is told, Mr. Anneley. Upon that, my Lord, instead of having any Feeling whatsoever for the Transgression of this Coachman of his, a Gentleman, Sir, says he, a Black-guard Shabby! I won't turn off my Coachman for any Abuse either to him or to you, and you are a Rogue, and a Villain, and he is a Bastard, the Son of Juggery Landy, by my Brother. With this, one of the Travelers, Mr. *Francis Anneley*, a Relation to my Lord, without any Provocation, gave Mr. *McKercher* a Stroke over the Head with his Whip. Then my Lord began to insult him in a higher and louder Tone, and made a Proclamation to the Company, getting up and resting himself on his Stirrups, that his Voice should reach them all, that this Mr. Anneley was a Bastard. I do, says he, declare before you all, that that Fellow is no Gentleman, but a Bastard of Juggery Landy's, a Kitchen-maid; and continued his Abuse of Mr. *McKercher* with the most scurrilous Language. As soon as Mr. *Francis Anneley* saw that his Relation's Blood was a little up, he repeated the Blow, and with the butt end of his Whip struck Mr. *McKercher* on the Forehead, which stunn'd him in some measure. This Blow was follow'd by some others; but however Mr. *McKercher* did not consider his own Safety, but turn'd about to take care of That, which concern'd him more than any Misfortune that could have attend'd himself; and there having laid his Eye upon Mr. Anneley, Mr. *Gogarty*, and Mr. *Kennedy*, desired them to make the best of their Way off, or they would be murder'd, and that he would follow; but before these Gentlemen could turn their Horses to gallop off, Mr. *Francis Anneley* was too nimble for them, and made a Stroke at Mr. *Gogarty*, which cut him to the Skull, and he, with many other Persons, repeated these Blows, until there was scarce a part of him which did not feel the Weight of Mr. Anneley's Arm; he was stunn'd, and knock'd down, by the first Blow, and continu'd under cure of his Wound for a Month after. Mr. *Kennedy*, another of these Gentlemen, without the least Provocation, endeavouring to shift for himself, was most unmercifully beat by the Travelers assist'd by several other Persons unknown; and when stunn'd and knock'd down, my Lord laid on him, until some of the People of the Country cried out to him, *For Shame, for Shame, for Shame, don't kill him.* Mr. *Francis*, my Lord's Agent, I had like to have forgot, had not the least Hand in this Affray, but punctually observ'd his Lord's Orders, who cried out, *Knock them down, kill the Villains.* When they had thus level'd down Mr. Anneley's Friends, who were his Guard, my Lord then thought it the proper time to look out for him, and call'd out, *Where is the Dog, where is the Son of a Whore? kill him.* Mr. Anneley, according to the Intimation given him by Mr. *McKercher*, that he was to be murder'd, set Spurs to his Horses, and got out of the Crowd; but a Servant of my Lord *Angley's*, upon my Lord's Inquiry where Mr. *Francis Anneley* was, said he had gallop'd off. As soon as Lord *Angley* heard that Mr. Anneley had gallop'd away, who had no Hand in this Affray,

Angley, or any other, I am not going to say, but I say, as soon as Lord Angley started, that he had got into one of the Crowd, and that he made his way to the Condition, I have now mentioned, he cried out to his Friends and Servants, *Follow the Royal, pursue the Royal, tear him from Limb, and all that will support him.* He directed them, my Lord, to destroy not only him, but any who should have Humanity to endeavour to protect him. Then this noble Lord's Influence over the Crowd will appear to be so absolute, that to the Number of *Forty* or *Fifty* of them pursued this helpless Gentleman. He had a Horse, happily for him, of great Speed, and he made as good Use of it; he soon out-stripped Mr. *McKercher*, who follow'd him, and so got out of the Field, with this numerous Train of People, some with Sticks, some with Staves, others arm'd with Pistols and Hangers, pursuing of them both.

Mr. *McKercher* was nearest to them, and overtaken by them; but however it will appear, that he was not intended to be the Victim of this Rabble that did pursue. I don't say that any of the Travellers did pursue, but I say of this Rabble that did pursue, as they understood Mr. *McKercher* was not to be the devoted Head, tho' they overtook him, and he was the only Man that could have given the Lord *Angley* the least Offence, they pass'd him by, but made all the Speed after Mr. *Angley* they possibly could, and indeed, when he got into a Road that was leading to a neighbouring Town or Village, to *New-bridge*, where he lay the Night before, to seek for Protection, this enraged and furious Mob, thus arm'd and pursuing, came so close, as that he thought it would be safer, or at least more decent, to die with his Face toward them, than to be destroyed, behind his Back. He was call'd out to by some People that had nothing to do with the Affair, that there were People with Pistols at his Back, ready to shoot him; upon this, he turn'd his Horse, and in the Turn the Horse's hind Feet fell into the Ditch, and the Horse fell upon this unfortunate Gentleman in the Ditch, and bruise'd him in a very terrible Manner. Whilst he lay speechless in this deplorable Condition, up came this Mob, and had it not been that one Mr. *Archbold*, who is a Gentleman of great Humanity, and well deserves the Influence he has in that Country, interpos'd and rescued him, half dead already in the Ditch, from their Violence, there had been a speedy End put to all this Gentleman's Right and Pretence to the *Annexed* Estate, by an End being put to his Life. My Lord, we will shew your Lordship the Condition that this unfortunate Gentleman was in; how he lay in the Ditch till he was taken away speechless and senseless to *Newbridge* in a Chaise, being not able to ride or stand, and his Life despair'd of for some Months.

Now, my Lord, I have only one other principal Fact concerning this Matter to trouble you with, which I am instructed to charge Lord *Angley* with in the most express Terms; and that is, when the Mob had return'd from the Pursuit, into the Field where Lord *Angley* was, some of them seeing him impatient to know what was done, they cried out to him, *By God, my Lord, he is kill'd, he is dead.* I cannot without Violence to myself mention what is said to have dropp'd from that Lord upon the Occasion, and would be pleas'd I could mistrust the Truth of it; but I am instructed to say he could not conceal the Emotions of Joy which he felt on these glad Tidings, but cried out, *I am glad of it, then all is well.* So, my Lord, this that was intended to be the most tragical Scene, and came within a Hair's Breadth of it, I say, by the Interposition of Providence falls out to be this Day but a fable. Offence; therefore I shall not trouble your Lordship any further with the Circumstances of this Fact; they will come out more emphatically upon the Testimony of the Gentlemen, who have had more Reason to have felt them than I have. We shall

examine but a few out of many Witnesses, and shall endeavour to lay this Matter before your Lordship without taking up more of your Time than an Offence of this Publick Nature can deserve from a Court of Justice.

Mr. *McMann*. My Lord, as the Case has been stated to you, I shall trouble your Lordship but with a few Words; which are, that as the Circumstances of this Affair will be a great Aggravation of the Crime, so will they increase the Punishment; And this, my Lord, will, in Evidence, appear to you to be an Offence of as rude, angry and revengeful a Nature, as ever appeared in a Court of Justice. We have the Happiness to have alive at this Day the Gentlemen thus assaulted, to shew your Lordship and the Jury the Danger and Violence of this Assault. I shall call one of the Gentlemen—

Mr. *McKercher*, who will tell you in what manner and by whom he was assaulted, (and what will still more heighten this Offence) the Quality and Dignity of the Offenders, the Time and Place where committed. My Lord, the *Carrage of Killara* was the Place where this Assault was made, the Time when it was given, when Thousands of Persons were assembled at a publick Horse-Race; one of the Offenders, a Noble Peer of this Kingdom; and another of them in the Commission of the Peace; and the manner of it, which he will tell you, will appear to you to be without any the least Provocation. This, Gentlemen of the Jury, will very particularly and very fully appear to you from the Evidence which we shall lay before you.

Mr. *Morgan*. Here are four Persons, my Lord, concern'd in the four several Indictments now depending, and they are all included in each Indictment; but, I hope, if it appears that any one or more of them is not affected by the Evidence that shall be given on behalf of the Crown, upon any one particular Indictment, such Person or Persons shall be allowed to give Testimony on behalf of such of the Travellers as shall be affected by the Evidence given on behalf of the Crown on such particular Indictment. Suppose, for the purpose, it should appear upon the Indictment for the Assault upon Mr. *McKercher*, that one or more of the Gentlemen mention'd in that Indictment is not guilty of the Charge laid in that Indictment, it would be against Reason that such innocent Person should not be admitted as a competent Witness on that Indictment, and highly injurious to such of the Travellers (as may be affected by the Evidence on behalf of the Crown) not to have the Benefit of that Person's Testimony, who, by the Evidence on behalf of the Crown, has no Guilt imputed to him on that particular Indictment; and may perhaps be able to give as good an Account of the Matters charg'd in that Indictment as any Witness on behalf of the Crown can pretend to give. For this Reason, and in as much as these several Indictments are but meer Accusations, I humbly conceive that, after the Evidence for the Crown is given, the Jury should be sent out to consider of their Verdict as to such of the Travellers separately, as we apprehend shall not be affected by the Evidence given on behalf of the Crown on any one particular Indictment, and if they are acquitted, that we may be at Liberty to examine them as Witnesses for the other Travellers on that Indictment.

Caution. This will be almost an Impossibility, it will be an impracticable Thing, as this Case is stated by Mr. *Harward*, to keep the Indictments separate; but however, I don't see that the going on with them all together will affect you in this Point.

Mr. *Morgan*. If the Gentlemen concern'd for the Crown shall not in the Course of their Examination particularize the Indictment, to which they produce this or the other Witness, but examine each Witness to all the Indictments generally; from thence a Necessity arises on our Part to take notice what

What Witnesses or Witnesses make to this or that Indictment, and to what Person or Persons mentioned in this or that Indictment; for otherwise, according to this Scheme of including four Persons in four several Indictments, a Man may lose the Benefit of the Testimony of his most material Witnesses, nothing more being necessary to be done to strip him of that Benefit, than to have his Witnesses included in the same Indictment with himself, be they never so innocent of the Charge contained therein; the Consequences of which must be very fatal, if the Law has not prescribed some Method, whereby such Witnesses, notwithstanding such Indictment, are to be at Liberty to be examined; and I must beg Leave to rely upon it, that such Method is known in Law, and is what I have before mentioned.

I say therefore, my Lord, if this Prosecution is to be managed and proceeded upon in that Manner, though any one or more of these Traversers should be guilty as to three of the Indictments, yet he or they can't be examined for any of the other Traversers upon all or any of those three Indictments; because all the Traversers being upon their Trial upon the four Indictments at one and the same time, and the Examination on behalf of the Crown being applied to all the four generally; such guilty Person as to three of the Indictments, being guilty as to the fourth, cannot be examined upon any of them, because by that means he may possibly let about swearing himself off of the Charge of the fourth Indictment, which perhaps by the Evidence on behalf of the Crown might be brought home to him. Suppose, for the purpose, that Mr. James is innocent as to the Assault upon Mr. Mc Kercher, yet your Lordship will not suffer him to be examined upon that Indictment because there is another Indictment upon which he is on his Trial at the same time, and which he may possibly be found guilty of.

You won't be under any Difficulty at all in proceeding upon all the Indictments together; for suppose now, Mr. James shall be affected with Evidence given upon two of these Indictments, but with none upon the third; why then, I shall tell the Jury, that so such an Indictment and such a one they are to receive Evidence against Mr. James, and to such not.

Mr. Harcourt. I apprehend this Course that we are proceeding in is the proper one, that the Court may be thoroughly satisfied of the Nature of the Fact.

1. DARRID, MCKERCHESTER, Esquire.

Mr. Moline. I desire, my Lord, that the Traverser, who has now submitted to the Indictments, may go out of Court whilst the other Witnesses are examining.

Angus Byrne is ordered to withdraw.

Mr. Mc Manus. Q. Mr. Mc Kercher, were you assaulted at the Races of the Carragh by any and what Persons — and in what manner? Tell the whole Affair.

A. As well as my Memory can suggest after so great a Distance of Time, I will. Upon the 14th, the last Day of the Races, Mr. Anneley —

Q. Of what Month?

A. Of September, my Lord — Mr. Anneley, several other Gentlemen and I came to the Carragh for the Diversion of the Place.

Q. Mr. Mc Manus. What Mr. Anneley?

A. Mr. James Anneley.

D. Go on, Sir.

A. We had not been long there, when passing by a Tent where the noble Peer, who is one of the Traversers, stood with some other People —

Raise your Voice.

My Lord, we had not been long upon the Race-ground, when Lord Anglesy, who was standing at

a Tent with several other People, called out to me in particular, (pointing to me) that McKercher, though he appears here like a Gentleman, is an arrant Scoundrel, and the Count you see upon his Back, I saw not above a Month ago in Monmouth-Street. As I looked on this of too low a Nature to deserve Recountment, and as I came there with a firm Resolution not only of keeping the Peace myself, but had recommended it to all along with me, I took no Manner of notice of this Insult. After the Diversion was over, we retired to Newbridge, and on the Friday, the last Day of the Races, we returned again to the Carragh, with the same View as before of seeing the Diversion of the Place only; we arrived there as the first Course was at an End; we were no sooner derided by Lord Anglesy's Coachman, than he immediately drove his Coach and Six full butt at us.

Q. At whom, Sir?

A. At Mr. Anneley; the other Gentlemen of our Company and myself. — This he repeated three or four different Times, which we as often avoided; at length when he found we could not be provoked by that Behaviour, he began in a gross and insolent Manner to insult Mr. Anneley.

Q. Who did?

A. The Coachman. — Calling him Shoe-Black; Shoe-Boy; when he found that Mr. Anneley did not seem to take any Notice of it; — he repeated the Insult, and at length pointed out to him, There he is, the Shoe-Boy.

Q. Who did he point to, Sir?

A. To Mr. Anneley, my Lord. — Though I thought this a very great Insolence, and scarce to be bore, yet I would not resent it upon the Fellow as he was a Servant; but thought it more advisable to complain to Lord Anglesy, to the Noble Peer his Master, and expected proper Redress from him. Accordingly, I went to look for him, and it was some Time before I found him. At length I was told, that he was at the Winning-Post, in the Middle of a great Circle of Gentlemen, and others, who had assembled there in relation to some Disputes that had happened about the Horses. I came up in the civillest Manner I could, and said, My Lord, I beg Leave to speak with your Lordship aside; I was unwilling to expose the Fact before the Crowd, and for that Reason I called him aside to acquaint him of it in a proper Manner; whether he misapprehended me or no I can't tell, but he replied, This is no Time nor Place, you see I have no Pistols before me. I told him, for what I have to say to your Lordship every Time and Place is proper; I came only with a Complaint against one of your Servants who has insulted a Gentleman, and I should be glad to know my Lord, whether it be by your Orders or approbation he behaved so. My Lord asked me, Who the Gentleman was that was insulted. I pointed out to Mr. Anneley, who stood behind out of the Circle, and out of the Crowd, and said, That is the Gentleman, my Lord. To which he replied, He a Gentleman, a Sheriff, by G—d, a Black-guard and a Thief. One or two who stood by the Noble Lord, upon that said, What, my Lord, will you turn off your Servant for that Scoundrel? I have omitted something, my Lord, I beg Pardon; I likewise said, As the Affront was very publick, it is proper the Satisfaction should also be so, therefore — it is expected that you should strip your Servant, and turn him off in the Field.

Mr. Baron Mountney here lets the Jury know what Mr. McKercher had hitherto said, and then says, Repeat that again that the Jury may hear the very Words.

I said, That as the Affront was very publick, that it was expected his Lordship should give adequate Satisfaction, which was, that he should strip the Servant of

6 The Trial of Richard Earl of Arundel, &c.

of his Livery and gave him of such Ground; or Words to that Effect.

Mr. Harward. Are you positive that you explained yourself in such a Manner that he could not mistake you?

A. I am satisfied I did.

Court. Q. And after this it was some Gentlemen said, *What! will you turn off your Servant for that Scoundrel?*

A. It was after this that some Gentlemen inter-fering, said that.

Mr. McManus. Q.

Do you know who said that? A. I can't be positive, but I think it was the same Person that struck me afterwards, I think it was Francis Ampley.

Q. Are you sure it was he?

A. I say, Sir, I can't be positive.—Lord Ampley then said, No, by God, I won't, and you are a Villain, a Scoundrel, and a Thief, and a great deal more of the like decent Sort of Language he gave me.

Court. Q. Whom did my Lord apply to when he said that?

A. To me. You are a Villain, a Scoundrel, and a Thief; as near as I can recollect, those are the very Words. With that I believe I might say in return, *That his Lordship said, and that he durst not single himself out and tell me so.* Whereupon four or five Persons, whom I don't know (but Mr. Tans was one of them) called out, *My Lord, you don't go to fight such a Scoundrel; here are Abundance of People to go out with him.* My Lord, I don't know whether it was precisely at that Point of Time or not, when a Gentleman came and struck me on the Head, but I think it was.

Mr. McManus. Q. Who was that Gentleman?

A. It was Mr. Francis Ampley of Ballygar.

Q. Do you see him in Court?

A. That is the Gentleman.

Court. Q. With what did he strike you?

A. With the Butt End of a Whip, which Stroke occasioned a Contusion; and there was a little Bit of the Skin broke, which occasioned a Bleeding.

Q. What further passed, Sir?

A. I returned the Blow, my Lord, with the Lash End of my Whip. I had a Case of Pistols before me, but would not make Use of them in the Crowd. Then Lord Ampley finding himself so well supported, raised himself up in his Stirrups, accosted the Populace, and all that were present there, and poured out a great deal of scurrilous Language against Mr. Ampley.

D. Go on, Sir.

A. Declared, *That he was not his Brother's lawful Son, but a Bastard of Juggy Landy's, and a Shameful Black.* When I perceived Lord Ampley attended by so great a Crowd, who seem'd all to Side with him, I began to be apprehensive that there might be some Danger of a Design against Mr. Ampley, and thereon I call'd to Mr. Gossery and Mr. Kennedy, who were two of our Company, to come away. I myself turn'd about my Horse, immediately and went in quest of Mr. Ampley. I had no sooner turn'd my Horse, but I heard Lord Ampley (for I know his Voice very well) call out distinctly, *There is one of the Villains, knock him down.*

Mr. McManus. Q. Did you see my Lord Ampley when he said so?

A. I did not; but I know his Voice perfectly well.

Q. Are you positive you know his Voice?

A. I am positive I know his Voice, if one Voice can be distinguish'd from another.

Q. What were the Words?

A. *There is one of the Villains, knock him down.*

Q. Did you hear him name any Person's Name?

A. I heard him name Mr. Gossery, and say that, *That Gossery is one of the greatest Villains, knock him*

down. And I apprehend that it was then that Mr. Gossery was struck, though I did not see it. I went in quest of Mr. Ampley, and when I found him, carried him a little aside from the Crowd. We had not been there half a Minute, when one of my Servants and a Gentleman, or two, Strangers to me, came up to us, and with great Emotion and Concern said, *For God's sake get away, get you gone as fast as you can, there is a Design to murder you all.*

Q. Who were they that said so?

A. There was a Groom belonging to us, but I don't know the others.

Mr. Bagot. Was it the Groom or the Gentlemen that desir'd you to get away?

A. The Groom came first, and desired us to go off; I did not give Credit to what he said, being resolv'd to wait there till our Company join'd us, but immediately there came up Two Gentlemen, and said, *For God's sake, Gentlemen, get away as fast as you can, for there is a Design to murder you.*

Court. Who was with you at this Time?

A. Mr. Ampley only.—The two Gentlemen varied in their Expression a little; for the one said, *Go off, for there is a Design to murder Mr. Ampley and you;* and the other said, *For God's sake go off, or you will all be murder'd.* Upon which I desired Mr. Ampley to put Spurs to his Horse, and we gallop'd away at a gentle Canter. We had not gone above Fifty or Sixty Yards, when we perceived People moving after us, which made us whip and spur our Horses; but Mr. Ampley was mounted on a Horse that had more speed than mine, and he made a great deal of way before me; There was a Gentleman passing by, one Mr. Hacker, mounted upon a good Horse, and I desired him to keep close to Mr. Ampley. After we had pass'd over the Sod, the Carrage Ground, and had entered into the Road, a Lane leading to Newbridge, good way up the Lane, there I found Mr. Ampley lying in a Ditch.

Q. Whereabouts was that?

A. A good way up the Lane, leading from the Carrage to Newbridge, speechless and senseless, and as I imagin'd, dead, my Lord. I found him with several People about him to the number of Nine or Ten.

Q. Do you know those Persons?

A. Why really, there are two that I can now recollect, one, Mr. Archibald quite a stranger to me at that time, and a Gentleman, who is an Attorney in Dublin, I think his Name is *Kerison* or *Cochran*.

D. Go on, Sir, if you please.

A. There was a Surgeon call'd for.

Q. Do you know who the Surgeon was?

A. That Gentleman Mr. Hacker, who I had spoke to and who had pass'd me.—I don't know whether he had lanced himself, or borrowed Lancets, but he attempted to bleed Mr. Ampley, and he could get no Blood. In this Condition Mr. Ampley continued for about three quarters of an Hour to the best of my Judgment, and there being no Carriage, nor he able to get on Horseback, I rode directly to the Inn to order the Coach which had brought us from Dublin; but before the Coach was ready, he was brought to the Door of the Inn in a Chaise. I don't know whether I ought to go any further, or to relate what pass'd the next Day, which had still a darker and more wicked Complication.

Court. Go on, Sir.

Mr. Morgan. I hope your Lordship will think, that as these Indignities are Indignities for Accus'd faults committed upon the 16th of September, any thing that happen'd after that Day is not proper to be given in Evidence, and more especially, as they are not laid with a Continuance, and therefore submit.

suit it to you, whether it should not be given in Direction to the Gentlemen of the other Side not to travel into the Transactions of any subsequent Day. I think every Fact before that Day relative to the Fact laid in the Indictments is proper to go to the Jury; but any distinct Transactions of the following Day, no way relative to such fact are not proper to go to them, and therefore ought not to be admitted as Evidence, and more especially as the Traversers can't be supposed to be prepared in any Defence thereto, not being charg'd with any thing but what was previous to the 17th. I apprehend that Mr. McKercher is just about giving an Account of what happen'd on the 17th, which I conceive is no way material or relative to these Indictments, and therefore hope that the Evidence only that he can give to the very Facts laid in the Indictments will be admitted, and look'd upon as proper Evidence, and no other permitted by your Lordship to go before the Jury.

Court. I hope we won't unnecessarily lose Time about Matters that are obvious, and need no Debate. To be sure, any thing not relative to the Fact is improper to be given in Evidence, or to come into the Consideration of the Jury; but any thing relative to the Fact, which can help to explain it, whether before or after it happened, is extremely material for the Consideration of the Court and the Jury. This Case, or Cases of the like Nature I have heard practis'd a hundred and a hundred Times, for I did for three or four Years together constantly attend in a Place, where such Cases as this were carried on, and I found it always the Practice, for every thing tending to shew and explain the Fact, whether it happen'd before or after the Commitment of it, to be allowed as proper Evidence.

Mr. Spring. My Lord, I own it is very proper for every thing to be given in Evidence relative to the Fact, but nothing can relate to, or be the Occasion of this Fact but what happened before it was committed, and therefore it is highly improper to take in any supplemental Transaction of the following Day, no way relative to the Fact for which the Traversers stand indicted, and which can only serve to inflame the Minds of People. I think it enough for us to have prepared ourselves for any Actions that happen'd before the 16th, and not be call'd upon to answer the for anything that occur'd after Indictments were laid, and no way relative to it. This has been the constant Practice, and I think it to be as clear as any thing in the whole Course of the Proceedings of the Law.

The Council for the Traversers were over-ruled in their Objection.

Mr. Malone. I desire, since Mr. McKercher is permitted to proceed, that he may be confined to the Transactions of the next Day, which are relative to the Fact only.

Court. I shall take care to confine him to such Evidence as is proper. Go on, Sir.

Mr. McKercher. We went early to Bed with a Design to get up in the Morning betimes, and return to Dublin; but before we could get out of our Beds in the Morning, we were alarm'd by the Landlord of the House and his Servants, who acquainted us, that the Ways were beset all round the House with a great Number of People with all sorts of Weapons, and that he apprehended it was with a wicked Design against the Life of Mr. Annisley, and the other Gentlemen; that some of them, he knew, belong'd to Lord Anglesey, and others to Mr. Francis Annesley.

Court. What was that Man's Name?

A. Burdell. — We got out of our Beds, and expecting the worst, put ourselves in a Posture of Defence.

D. Go on, Sir?
A. This alarm'd us a good deal, my Lord, and we got out of Bed, and put ourselves in a Posture of Defence. The same Advices were repeated over and over again to us.

Q. By the same Persons, or by others?

A. By the same and other Persons. — Several Gentlemen that lodg'd in the same House that Night, who were not of our Company, were very much alarmed, got their Horses and rode away.

Q. Do you know who they were?

A. I don't know, my Lord; Mr. Hackett and one Mr. Carrick stayed, perhaps they can give you some Account of them. — We were likewise told before we could venture down Stairs, that the Passage was occupied by Threes, Fours, or more of Lord Anglesey's People, and in a very extraordinary Manner.

Q. From whom had you that Information?

A. From the Landlord, from Burdell. — My Lord, as our Company was not very numerous, and consequently not able to defend ourselves long against such a Multitude, we fell upon a Stratagem, which was, to make the Landlord whisper among them, that we expected a Troop of Horses from Dublin. In a short time after he acquainted us, that he had whisper'd it about, and he believ'd it would have the desired Effect, for some of them were frightened. I then ventur'd down Stairs; I no sooner came down, but I was seiz'd upon by one Michael Lay (attended by a Constable) who is a principal Agent of Lord Anglesey's, as I am inform'd. I ask'd the Constable at whose Instance I was arrested; Lay answer'd me, it was at my Lord Anglesey's, and produc'd a Warrant from one Mr. Benjamin Fish, a Justice of Peace of that Part of the County. I told Lay, that my Lord Anglesey had no occasion to bring all this Croud together with Arms to seize upon Gentlemen, who were always ready to submit to the King's Orders whatever they appeared, unless he had some wicked Design to execute under that Colour. However I desired him to walk up Stairs, that I would follow him and give Bail.

Q. What was the Warrant for?

A. For an Assault. Lord Anglesey had sworn Examinations against me, Mr. Gossey, and Mr. Kennedy, for an Assault the preceding Day upon the Curragh, wherein he had sworn that he was in Fear and Danger of his Life, as I was told.

D. Go on, Sir.

A. Lay walk'd up Stairs, and I shew'd him Mr. Gossey and Mr. Kennedy, the other Gentlemen that were charg'd with the Assault; they likewise submitted. We breakfasted, and order'd the Coach to be got ready to carry us before a Justice of Peace, to give Bail; they struggled hard to have us go back towards the Curragh to give Bail; but we told them, that, as we were going forward to Dublin, it was more reasonable we should give Bail to a Justice on the Way; in which we prevail'd, and went into the Coach.

Q. Who went into the Coach?

A. Mr. Kennedy, and I, and Mr. Carrick, one of the Gentlemen that was to be our Bail. We would not so much as carry a Sword, or any sort of Weapon, as we look'd upon ourselves to be in the Condition of Prisoners, and respected the Laws. Mr. Annesley rode with Pistols, as he was not charg'd with any Assault; Mr. Gossey, the Servants and Mr. Hackett rode along with him. We had not gone far from Newbridge in our Way towards New, when the Coach was stop'd and Mr. Gossey came up and alarm'd us.

Q. Who stop'd the Coach?

A. Mr. Gossey — and told us, that there was a Man there that was going to shoot Mr. Annesley, and

and desired we would take him to the Coach. I forgot to acquaint you looking that *Lord Angelsey* loved us likewise, and with his wife.

Q. On Horseback?

A. On Horseback.

D. Go on, Sir.

A. When we were about half Way, we were met by several People from *New*, who had been informed of our Danger, and came to our Assistance; and in this Order we went to *New* with all this Crowd attending us.

Q. How many met you from *New*?

A. There were, I believe, about *Fourteen* or *Fifteen* People. — We sent for the Magistrate of the Place, one *Mr. Bann* (who is now here in this Town) told him what had happened, and desired that one *Augustus Byrne*, who at that time call'd himself a Servant to *Lord Angelsey*, and carried a rifled barrell'd Piece, might be examined for what Purpose he carried it. Before the Magistrate would proceed to Examination, he would see whether the Piece was loaded or not. It was a Screw Barrell, the Barrell was unscrew'd in the Presence of the Magistrate, as I was told by *Mr. Hunter* and *Mr. Carrick*, who unscrew'd it, and they extracted *Eight Bullets*. Then *Augustus Byrne* was call'd into the Room, where there were *Nine* or *Ten* Gentlemen present, and examined. He was ask'd *Why his Gun that was?* He answer'd, *It is my Lord Angelsey's, what were you to do with this Gun?* I was desired to pursue *Mr. Lacy's* Direction. *What Directions had Mr. Lacy?* To that he answer'd in general, *In case there had been a Refusal*, without explaining himself any further. Then he was ask'd, *In case of a Refusal, what was he to do with this Gun loaded as it was with Eight Bullets?* *Lady* upon that came up and told him, *Sir, Answer no more Questions, you are not oblig'd to answer.* Then *Lady*, pretending to be *Lord Angelsey's* Servant, and claiming the Gun as *Lord Angelsey's*, the Gun (indeed contrary to my Opinion) was deliver'd to him by the Advice of another Gentleman who was present. *Mr. Bann* not thinking himself sufficiently authoriz'd to take Ball in a Case of so high a Nature, where a Peer was concern'd, refer'd us to *Mr. John Burke*, a Gentleman in that Neighbourhood, from whence, after Ball given, we proceeded to *Dublin*. I have narrated the principal Facts, as near as I could recollect them, my Lord, and have nothing further that is material.

Mr. *Harward*, *Mr. McKercher*, if I don't mistake it, you have mention'd that you were apprehensive, I think upon the Information of a Servant and Two Gentlemen that you don't know, who came up to you upon the *Carriage*, to tell you to get away as well as you could, that you might be kill'd; you say you were apprehensive that you and your Friends there would be murder'd; what I desire is this, that you will satisfy the Court and the Jury what your Reasons were for apprehending there was that Design?

A. Why really, Sir, I had several Intimations long before that Time, of *Lord Angelsey's* Designs, of which I could give many Instances were it proper on this Occasion; and I saw him that Day supported by a great Number of People, who bore no agreeable Countenances to *Mr. Ampley*, or any of our Company; these I thought Grounds sufficient for my Apprehensions.

Q. You gave an Account of a Rifled Barrell'd Gun the next Day, were there any other Arms when those People came to apprehend you, and who had them?

A. Yes, Sir, I perceiv'd one Man that belong'd to *Lord Angelsey*, with a Pistol on each Side of his Breast. He was one of his Servants, as I perceiv'd by the Livery.

Q. *Yes*. You were pleas'd to say, that on the 14th, the first Day of the *Carriage* Races, you were insulted by *Lord Angelsey*?

A. Yes.

Q. Did not you go the first Day attended by a great Number of Gentlemen and Servants, all armed? The first Day, Sir?

A. I believe there were about three of the Gentlemen armed, and two Servants.

Q. Were they arm'd with Pistols and Backswords, or with Pistols, Blunderbusses and Carbines?

A. I can't recollect whether there were any Blunderbusses, or not.

Q. Were the Servants arm'd?

A. They were, and always were when we travelled in *England*, as well as there.

Q. Is it the Custom to go to Races arm'd?

A. I don't know that it is the Custom. Any Gentleman that pleases may carry Arms, if he will; I have known it the Custom in *Scotland* for Gentlemen to ride with Furniture and Pistols; and I saw some at the *Carriage* that Day.

Q. Is it the Custom in *England* or *Ireland*?

A. I believe not of late the general Usage, but any body may, if they please, ride in Furniture.

Q. You said just now, Sir, that you were insulted the first Day?

A. I did so.

Q. Can you take upon you to say, that it was *Lord Angelsey* call'd out, and gave you the opprobrious Language you mentioned?

A. I can take it upon me positively to say it was he, because I saw him and heard him.

Q. You saw him and heard him?

A. I did.

Q. Pray, Sir, had not you reason from thence to conclude, that, if you went thither, you should meet with the same Treatment the next Day?

A. I own, I might have reason from *Lord Angelsey's* Behaviour, and Attempts before that Time, to apprehend every Thing that's evil; and it was for that Reason that we always went very well armed.

Q. You went therefore apprehensive of ill Treatment?

A. No, Sir, I did not say I was apprehensive of ill Treatment there more than at any other Place; because I look'd upon us not only to be under the Protection of the Law, but also secure, where all the Gentlemen of a Country were assembled, who would not suffer us to be insulted.

Q. But I would know, had not you reason to expect the like Treatment again?

A. I had all the Reason in the World to expect it from *Lord Angelsey*, but was determin'd to keep out of his Way, if possible.

Q. You'll recollect the Preparations you made the Night before for any possible Event that might happen?

A. We made no extraordinary Preparations.

Q. Were there no fresh Chargings?

A. We always charge our Carbines, if we have any, and Pistols every Morning, when we ride.

Q. Were not your Servants Blunderbusses charg'd?

A. I know not that they had any.

Q. Pray, Sir, recollect the Directions you gave for their loading their Arms?

A. By your ensuing Question you seem to take for granted, that I gave particular Directions, but I gave no particular Directions.

Q. Did you give any general Directions?

A. I always gave general Directions for having our Arms loaded, and in good Order, every Morning.

Q. Did any of your Company load any of those Arms?

A. I don't recollect that they did.

Q. Did

Q Did not you lead some of those Arms your-
self?

A I loaded none; I leave that to the Servants, to
be done every Morning.

Q What! to load every Morning?

A Not to load, but prime; so see that the Arms
are tight and in good Order.

Q You say, that *Friday* you met my Lord *An-
gley's* Coachman, explain, did he drive round you,
or at you?

A He made several Passes at us directly, so that
if we had not avoided him, he must have run over
us, and have done us Mischief. He made several
Passes at our Company within the Rails, which
obliged us, in order to avoid him, to go without
the Rails, and he followed us without the Rails, and
made several Passes at us there also.

Q How far was Lord *Angley* from this Place?

A I don't know, where he was at that Time. I
went in quest of him afterwards, and was a good
while before I could find him, and in the end found
him at the *Winning Post*.

Q How far was that from the Place where you
were insulted by the Coachman?

A He pursued us all over the Place.

Q What Place?

A The Place where the Company resort by the
Winning Post; the other Side of the *Winning Post*
from *Burwell's*.

Q But he could not drive at you without driving
at others at the same time?

A He drove at our Company directly, and fol-
low'd us when we avoided him.

Q You look'd upon this Treatment as an Affront,
and without question resented it in such a manner as
Men of Honour would, not on the Servant, but on
the Master, and went to look for Lord *Angley*, to
get Satisfaction in the Way usual among Men of
Honour?

A Quite the contrary, Sir; I went with a Re-
solution to keep the Peace.

Q Had you no Directions from Mr. *Amusey* to
go to call Lord *Angley* to Account.

A I had no Directions.

Q Then you did it of your own Head, I sup-
pose?

A I did.

Q I say, you went to find out Lord *Angley* either
by Directions, or of your own Head?

A If you will let me know your Meaning, if you
will speak so as to be understood, I shall give you an
adequate Answer.

Q Did you go up to Lord *Angley* of yourself?

A I went of myself, Sir.

Q Did not you know that my Lord *Angley* had
not only at that Time insisted, that Mr. *Amusey* was
the Bastard Son of *Henry Lowry*, but knew your Er-
rand into this Kingdom?

A What if I did? what is that to the present
Purpose?

Q Answer the Question, Sir; Did not you be-
lieve that?

A I heard he had; I believ'd it.

Q Could you, Sir, then expect from Lord *An-
gley*, in Reason, any kind of Apology, or Satisfac-
tion, or Correction of his Servant, for saying of
Mr. *Amusey* what Lord *Angley* himself always in-
sisted he was?

A I did, and ought to have expected it; and
much more in the Case of Mr. *Amusey*, than of any
other, if my Lord *Angley* had acted properly.

Q You were his Champion, I suppose, and must
have Satisfaction for the Affront done him?

A I did not turn Champion for him; a Man turns
Champion for another, that goes to fight his Battles;
I did not go for that Purpose, but in order to avoid
a Breach of the Peace.

Q Could you expect that Lord *Angley* could

possibly be turning off his Servant for saying That,
that he himself had said to all the World?

A I have repeated it two or three Times that I
did, and had Reason to expect it, if Lord *Angley*
had acted as a reasonable Man, and a Man of Ho-
nour.

Q But you knew Lord *Angley* did, he was the
Son of a Kitchen-Maid, Could you then expect from
him, consistently with his consistent and repeated De-
clarations, that Lord *Angley* should strip his Coach-
man for an Affront offer'd to such a Person?

A What Lord *Angley* said proves nothing, nor
is it any way pertinent to the present Purpose. I
thought it not only consistent, but what Lord *Angley*
of all Men in the World should have done. Nor did
what Lord *Angley* thought of satisfy give his Servant
or himself a Right to insult Mr. *Amusey* in so pub-
lick a Manner.

Q Did you imagine it reasonable for any Person
to strip his Coachman at such a Time and Place, and
turn him out of his Box?

A I look'd upon it to be as gentle a Chastisement
as the nature of the Case admitted of.

Q Must my Lord *Angley* have driven his Coach
home himself?

A I saw Lord *Angley* on Horseback.

Q Was not your Intention, in case he refused,
to tell him he must fight Mr. *Amusey* or you?

A No really; I had no such Intention.

Q Was it not to provoke him to a Quarrel?

A I do say it was not.

Q Yet you expected, when you went to make a
Demand of this Kind, that he would have complied
with this Request of yours?

A If I had been of that Disposition, I should
have done it the first Day.

Q You mention'd the Words *Publick Satisfaction*,
had you no other View than to receive it by his
stripping his Servant?

A Sir, I have told you three or four times I had
not.

Q Did not you strike my Lord *Angley* that
Day?

A I did not.

Q Did not you break his Head, Sir.

A I did not, Sir; I heard Lord *Angley* swore
I did.

Q Did you see any body else strike him?

A I did not; nor do I believe he was struck
that Day.

Q Did not you come up in a very violent manner
and force your way thro' a Crowd to come at him?

A I believe I might, I believe I did press thro'
the Crowd.

Q Did not you apprehend that Lord *Angley*
knew you were the Friend of Mr. *Amusey*?

A I am persuaded he did.

Q Did you not, upon some Conversation be-
tween Lord *Angley* and you, raise your Hand?

A Why really I don't know whether I did or
not; for it is pretty common and habitual with me
when I speak to raise my Hand in this manner.

Q And you don't know whether it was rais'd or
not?

A I believe there is no Man that is oblig'd to
stand like a Statue when he speaks.

Q Did not you say that *James Amusey* was Earl
of *Anglesey*, and you an Impostor?

A I did not name the Earl of *Anglesey* that Day.

Q You did not tell him that he was an Impostor?

A I did not.

Q Did you turn your Whip in your Hand?

A I don't know how I held my Whip.

Q I ask you, Sir, whether during that Conversa-
tion with Lord *Angley*, whether with or without
Provocation, you did not tell him that he was an Im-
postor?

C

A I

A. I am not sure; I remember very well that he called Mr. *Angley* a *Whore*, & that he was a *Whore*; I told him, He had to me as *Whore*, & was the best of Lord *Angley*, they say, & *Whore*, & that I would not be so, & that I would be so, and in that I have the Satisfaction to think I have spoke perfectly.

Mr. Spence. You are forgetting, you say, you must wait longer for the Completion of your Petition.

A. And pray, Sir, as we busy in serving Company.

Q. Pray, Sir, you remember the next Day to have seen *Michael Lay*?

A. Yes, Sir.

Q. Did not you think that *Lay* for his Crying to you?

A. Why really I believe I did; I believe I might think him for answering the *Whore* possibly, for I was persuaded from the *Whore* I saw there he Orders were otherwise; but even so that I can't help saying that I was obliged to remonstrate for.

Q. Did not you think him as *Michael* for putting the *Whore* in Execution as he did peacefully, for we expected worse Usage.

A. Do you recollect that you desired my Lord to turn aside with you?

A. I believe it was the first Word I said to him.

Q. Did not you say after, that he dared not?

A. After he had called me a *Whore*, & a *Whore*, & a *Whore*, I told him, He had, and he dared not for the *Soul* of his *Soul* himself out and tell me so.

Q. Was not that before you were struck, Sir?

A. I believe it was before; I can't well remember, but I think it was.

Q. In what manner was Lord *Angley* armed?

A. I saw none about him.

Q. Did not you see his Pistols?

A. I saw none.

Q. How was Mr. *Francis Angley* armed?

A. I did not observe him so particularly; I know he was armed with a Whip, which I felt the Weight of.

Q. Did you see any of Lord *Angley*'s Company armed?

A. I saw some People armed that were of his Side, that were about him, and who seem'd to take part with him.

Q. Are you sure they were of his Company?

A. I concluded they were, as most of them seem'd to side with him.

Q. You mention'd something you apprehended from their Countenances that you withdrew yourself from thence, from *Mitchell*; describe those terrible Faces?

A. By their Countenances I apprehended some *Mitchell* might happen; but I am not so good a Painter as to humour you in drawing the Attitudes they were in.

Q. Who were the Persons who pursued Mr. *Angley* and you?

A. I can't tell you particularly who they were, being a Stranger, I know there were a great many.

Q. Did you know none of them?

A. There were two Gentlemen I knew, whose Names I am sorry you force me to mention, for I did not intend it, Sir *Killars Barrow* and Mr. *Warren* that pursued Mr. *Angley*.

Q. Don't you believe that they pursued out of Curiosity?

A. I don't know their Intent; but I know I was treated roughly by one of them.

Q. Well, but you can't point out any of Lord *Angley*'s Retinue or Servants that pursued you at this Time?

A. I can't, except Mr. *Jans*, he was one of the

Company; I was a Stranger, and did not know the

Company; I was a Stranger, and did not know the

Company; I was a Stranger, and did not know the

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Q. Don't you believe that he did so often? A. I can't say any thing about it. Q. Is Mr. Longman an Agent of Mr. Kercher's? A. He is a Friend of his, but no Agent. Q. Is he not an Attorney to the Admiralty? A. He has a Share of the Office of his Affairs. Q. Did not he take in Writing what the Witness had to say? Recollect? A. I can't recollect he did.

Q. Were these People that you call Servants of Lord Anglesey that surrounded the House, in the Evening or not? A. I understood Lady to be his Servant and chief Agent, but I saw none in his Livery, save one.

Q. Did you see any in his Livery on the Courtyard? A. I saw one in his Livery, that I took to be his Livery.

Q. Did Burrell tell you that any of Mr. Francis Anglesey's Servants were at the Inn in Arme? A. I don't recollect whether they were Servants or not, he said his People were in and about it.

Q. Is it your Belief or Opinion, that if you had not made the Application to Lord Anglesey, whether this Pursuit, and every thing that happened after, would have happened? A. I could then frame no Judgment about it, my Lord, I have since indeed, in my own Mind from what I have seen, been thoroughly persuaded that something of that Nature would have happened; and that the Provocations given us, were intended or set purpose to draw us in.

Q. You are asked to your present Opinion? A. I am of opinion, now that it would have happened some way or other, I was not then.

Mr. Spring concludes from thence that Mr. Kercher collected it. Q. The Jury desire to know whether, your Honour, when you were upon the Courtyard, were charged and primed, or not? A. I believe they were.

Q. Whether when you and my Lord were discussing together you put your Hand to your Pistol? A. I don't remember I did, and I am positive I did not.

2. HUGH KENNEDY, Esquire.

Mr. Callaghan. Where were you upon the 16th of September last? A. Upon the Courtyard of Killars.

Q. Inform the Court and the Jury of the Transactions of that Day; tell what happened to Mr. Kercher, Mr. Mc Kercher, and yourself? A. When we came first upon the Courtyard we were told there was a rising Ground upon the other side of the Field, from which we might better see the Diversion; accordingly we made towards it; in our way we were insulted by the Coachman of my Lord Anglesey, who drove at us, pointing to Mr. Kercher, and calling him *Shoe-Black*. Mr. Mc Kercher perceiv'd him sooner than I did; he ask'd me if I had seen him? I told him I had. Immediately after that we perceiv'd him making up to us with his Coach, which he drove again at us, and repeated it several Times. Perceiving he continued still to drive at us, Mr. Mc Kercher then said, he would see where Lord Anglesey was, to complain of the Abuse of his Coachman: Accordingly, we went in search of him, and were for some time before we could find him. We found him at the Winning-Post, where Mr. Mc Kercher went up, and in the mildest manner possible told him, he wanted to speak to his Lordship. All the Words they had together I can't distinctly repeat; but thus much I heard, that when

Mr. Mc Kercher told him he wanted to speak to him, he said, It was not a proper Place. Mr. Mc Kercher told him, Being Place was proper for what he had to say to his Lordship, which was, to complain of the Insults of his Coachman, and to desire he would give Satisfaction for the Abuse he had given a Gentleman on the Field. Lord Anglesey said, What Gentleman was affronted? Mr. Mc Kercher pointed to Mr. Kercher, and told him that Gentleman. Upon which Words arose between them, which I can't distinctly repeat at this Time; but in Consequence of those Words, soon after I saw Mr. Francis Anglesey of Bellinagar, strike Mr. Mc Kercher over the Head, so that the Blood came. Lord Anglesey, quickly after that happened, raised himself in his Sillings, and made use of the Language already repeated, that Mr. Kercher was not his Brother's lawful Son, but the Beggar of Juggy Landy, a *Shoe-Black*, and so that Mr. Kercher, and me, to retire; as soon as we heard him declare that, we ran'd our Horses to follow him. Immediately on the Turn of my Horse, Lord Anglesey struck me a violent Blow on the Head, so as to stun me.

Q. With what? A. With the Handle of his Whip, my Lord.

Q. During what Part of the Transaction was this? A. Immediately after the Language that pass'd between him and Mr. Mc Kercher.

Q. Did he say any thing before he struck you? A. I believe he might say, *There is one of the Pillars*.

Q. Did he name any Man? A. I believe Mr. Gooltry, there is that *William Gooltry*, or to that Effect.

Q. Was it at the same Time that he struck you that he said those Words? A. A very short Time before I was struck he said those Words.

Q. Describe the Stroke you got. A. The Stroke I got was on the back Part of my Head with the Butt End of the Whip.

Q. Did it do you any Hurt? A. It stunn'd me to that Degree that I almost fell upon my Horse's Neck.

Q. What was the Consequence of that Stroke? A. There was a very great Effusion of Blood followed.

Q. What ensued upon that? A. Immediately after that Blow, it was followed by a Number more from other People which knock'd me down on my Horse, so that I should have fallen to the Ground, if I had not been supported by the People on each Side of me.

Q. Who gave those Blows? A. I can't tell, my Lord, I was knock'd down in a good Measure by the Blow Lord Anglesey gave me.

Mr. Callaghan. Tell what you remember happened after you recover'd yourself? A. As soon as I recover'd and sat first on my Horse again, Lord Anglesey came from the Company he was with, and struck me seven or eight times running over the Head.

Q. With what? A. With his Whip.

Q. Which end of his Whip? A. It was the Lash. End the last Time he struck, but he repeated his Blows so long that the People cried out *Shame*, saying, *'Tis a Shame to abuse a Gentleman so*, or to that Effect; and soon after that he had done, and I rode off the Sod.

Mr. Callaghan. Was there any Conversation between my Lord Anglesey and you before you got that Stroke from him? A. I never spoke to Lord Anglesey in my Life.

Q. Had

Q. Had he spoke to you before he gave you the Blow?

A. I don't know that he did.
Q. Did you give him any Provocation to strike?
A. I give him no Provocation at all.
Q. I think you told you saw Mr. *Forbes* *Angley* strike some body; who was it he struck?

A. I did, I saw him strike Mr. *McKercher*.
Q. With what, Sir?
A. With the Butt End of his Whip.

Q. Was that Stroke a moderate Stroke, or given with such Violence as carried an Intent of doing Mischief?

A. His Forehead immediately swell'd pretty big, and a little Blood came from it.

Q. Before Mr. *Angley* gave the Stroke did you see Mr. *McKercher* give him any Provocation to strike him?

A. I saw no Provocation that Mr. *McKercher* gave, for I believe he did not speak to him at all.

Q. Do you believe that Mr. *McKercher* could have given him Provocation without your seeing it?

A. I think not, for I was pretty near him, and must have observed it, if any had been given.

Q. Tell what passed after the People cry'd *Shame*, and you got off the Sod?

A. My Finger was almost broke by one of the Blows, and that occasion'd my Whip to fall from my Hand.

Q. Explain yourself, Sir?

A. Immediately after my Lord *Angley* struck me, I was struck by a Number of other People whom I did not know, and among them I got this Wound on my Finger, which occasion'd me to lose my Whip.

Q. Mr. *Callaghan*. What became of you after this?

A. As soon as I could I rode down the Hill in quest of Mr. *Angley* and Mr. *McKercher*; I found Mr. *McKercher* just by where Mr. *Angley* lay; I did not stay to speak to him, but went on to Mr. *Angley*, whom I found fall'n in the Ditch, lying senseless, speechless, and pale.

Q. What Number of People were about him in the Ditch?

A. Ten or a Dozen.

Q. Did they appear to be Friends, or any of the People you apprehended he was in Danger from?

A. I can't say who they were, or what their Intention might be, I was a Stranger and could not distinguish.

Q. Was it at that Time in the Power of any body to do him Mischief?

A. He had been so long in the Ditch when I came up, that they had got a Surgeon to bleed him.

Q. But do you think it was in the Power of those People to hurt him?

A. I believe, they might if they had a Mind, had not Mr. *McKercher*, and others of Mr. *Angley*'s Friends come up.

Q. Mr. *McManus* to Mr. *Kennedy*.

Q. Where did you leave Mr. *Gogarty*?

A. I left him, I believe, upon the Carriage; I can't say, I did not see him after I was struck.

Q. Was he assaulted by any one?

A. He was wounded at the Instant of Time I was.

Q. Did you see any Body strike him?

A. I can't say distinctly that I did, but he was wounded about the same Time.

Q. After you took Mr. *Angley* to *Newbridge* that Night, did you observe any thing on the *Saturday* after?

A. Yes, we were alarmed very early that Morning before we were up; the Landlord and others coming to tell us that the House was beset by a Number of People, who they said, they believ'd had evil Intentions; upon which we got up and did

they had we could so make our Distance to Call they expected us. This declaration for kind Time till at last Mr. *McKercher* was down Stairs, to see if what we had been told was true; when he found according to the Information he had received from the People of the House, that there was a Number of People stand about the House. Mr. *McKercher* returned very suddenly, and with him off *Lacy* and a Constable, and told us, that there was an Action brought against him at the Suit of Lord *Angley*—
Q. Mr. *Callaghan*. What do you mean by an Action?

A. A Warrant granted by a Justice of Peace.

The Person then told me he had the same against me and Mr. *Gogarty*. What for, Sir, we ask'd him: He told us on my Lord *Angley*'s Affidavit that he was assaulted by us, and put in Fear of his Life.

Q. When Mr. *McKercher*, and *Lacy*, and the Constable came up with the Warrant, what happened then?

A. *Lacy* told me and Mr. *Gogarty* that he had a Warrant against us.

Q. And what did you do upon that?

A. We submitted directly, Soon after we had breakfasted, we disarmed ourselves, and went into the Coach, and were carried to *Near*.

Q. Who went into the Coach?

A. Mr. *McKercher*, Mr. *Carrick*, and myself.

Q. Did Mr. *Angley* go into the Coach on the Road?

A. He did.

Q. How came that?

A. Mr. *Gogarty* call'd out to us to take him in, for it was not safe for him to be there.

Q. Did Mr. *Gogarty* give any Reason for his saying that?

A. He gave it as a Reason for taking him into the Coach; that it was not safe for him to ride, for that one of those Fellows was going to shoot him.

Q. When you came to *Near* what happened then?

A. We sent for the Sovereign of *Near* to give in Bail, and there this Mr. *Lacy*, who came along with us, followed us into the Room, when this Person that appeared here, *Bryne*, was questioned in regard to this Gun.

Q. What kind of a Gun was it?

A. The Gun was a screw-barrell'd Gun, such as Game-keepers use.

Q. Who question'd him about him?

A. He was question'd by Mr. *McKercher* what he was to do with it. He answer'd, to follow *Lacy*'s Directions, and soon after *Lacy* stopp'd him, and bid him answer no more Questions.

Q. Was that Gun charg'd?

A. The Gun was uncharg'd before us in the Room, and from it taken eight Bullets.

Q. In your Presence?

A. I was present.

Q. Did any body claim that Gun back again?

A. Yes, Sir.

Q. How many Bullets were there?

A. There were eight, Sir, said by all the Gentlemen in the Room, I did not count them, but I believe there was that Number.

Q. By whom was the Gun claim'd?

A. By *Lacy*, as Lord *Angley*'s.

Q. Had Mr. *Lacy* any Arms?

A. I can't say as to that; I do not remember, I think he had.

Cross Examination.

Mr. *Magran*. Pray, Sir, was you at the Carriage the 14th of September?

A. I was, Sir.

Q. Did you see Lord *Angley* there?

1. I do, Sir.
 2. I do, Sir.
 3. I do, Sir.
 4. I do, Sir.
 5. I do, Sir.
 6. I do, Sir.
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 100. I do, Sir.

Q. Did you see any one else that day?

A. I took him to be the Servant.

Q. Why?

A. Because he wore his Livery, and I saw him before.

Q. What Livery?

A. I don't know whether I saw the Man's face before that Day.

Q. You live at Newbridge?

A. I took him to be his Servant, because he wore his Livery.

Q. What Cloaths did my Lord wear that Day?

A. My Lord wore brown that Day, a brown

Coat.

Q. What sort of Hat had he?

A. He had a black Hat.

Q. Had he Lace upon his brown Coat?

A. I don't remember.

Q. I ask you if he had Lace on his Coat?

A. I do not know, I believe he had.

Q. What sort of Lace?

A. I don't know whether Silver or Gold Lace.

Q. Was he in his Coach, or on Horseback?

A. He was on Horseback, riding a Bay Mare.

Q. Do you know any of the Company that was about him?

A. I can't tell any Man that was about him.

Q. Don't you live near that Place?

A. I live within a Mile or two of it.

Q. And yet you did not know any of the Gentlemen?

A. I did not know one of them.

Q. Can you name any one Man that was present, when my Lord made that Declaration?

A. I can't, I did not take notice.

Q. Did my Lord ever speak to you before that Time?

A. He did.

Q. Did he ever eat or drink with you?

A. I never drank or ate with him, he would not be so great with the Like of me.

Q. Do you know Mr. Francis Amusey of Ballysax?

A. I did hear of him.

Q. Do you know him?

A. I know him.

Q. Was you ever at his House?

A. I was at his House.

Q. Do you know his Servants?

A. I do not.

Q. Nor his Livery?

A. No.

Q. Do you know Mr. Steel?

A. I do.

Q. How far does he live from you?

A. I do not know.

Q. How far does he live from you?

A. I do not know.

Q. How far does he live from you?

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Q. How far does he live from you?

A. I do not know.

Q. How far does he live from you?

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A. I can't, Sir.

Q. Who? Name them.

A. Mr. William Warren, of Grangeley.

Q. Did any body strike him?

A. No, not one; I believe I prevented that pretty much.

Q. Do you believe any body would have struck him, if you had not been there?

A. Upon my Word, I believe some would have struck, if I had not prevented it; for Mr. Warren was alighting in order to strike him; and I told him, Don't strike him, for he's killed already. I believe, and you are a Gentleman of Fortune and Figure in this County, and not proper to be seen in such a Riot as this.

Cross Examination.

Mr. Green. Did you see any other People pursue Mr. Annesley besides Mr. Warren?

A. I saw several, but not named.

Q. Did you see any in Lord Annesley's Livery?

A. I can't tell; I did not take notice, whether any in Livery pursued him, or not.

Q. Did you stand by him for any time after you came to the Ditch?

A. I did, till I put him into the Chair.

Q. Did you see any of Lord Annesley's Servants there?

A. I did not observe if any Servant of Lord Annesley's was present, or not.

Q. Recollect who you found at the Ditch?

A. I found Sir Kildare Barretts, Mr. William Warren there; and so was Dillon also—and a good many Acquaintance.

Q. How soon after his Fall into the Ditch, did you come up?

A. He was some Time down, I believe; for the Horse had got up before I came.

Q. Did you see Mr. Annesley soon after this?

A. I turned back at that Time when I put him in the Chair, and saw the other Heat at the Carriage, and after that went to Newbridge.

Q. Had he no Bruise, or Cut, or Stroke, with a Whip, that you perceived?

A. He had not, that I perceived; nor did I look.

Q. Was he in his Senses when you put him into the Chair?

A. He was not.

Q. Did he tell you then that he got ever a Stroke from any body?

A. He did not tell me that he got ever a Stroke. How could he tell me then, when he was senseless?

Q. There was a Heat, you say, after he fell?

A. There was, Sir; I went back to see the Heat.

Mr. Digby. Did you see any body pursue him before he fell down?

A. When I came up, he was in the Ditch; there were a great many running that Way.

Q. Did you know any of them?

A. I knew Mr. William Warren, and Sir Kildare Barretts, and spoke to Mr. Warren, not to strike him.

Q. Did you see Mr. William Warren's Horse run away with him that Day?

A. I did not observe his Horse run away with him; I shall tell you what I saw.

Mr. Malone. Do you think the People you saw there intended to do him any Harm?

A. God knows, whether they intended him Harm, or not.

Q. Do you believe all the People you saw there were bent to do him Mischief?

A. I believe there were several, amongst such a Concourse of People, that did not; Sure, if they were all bent to murder him, he would have lost his Life indeed!

Cont'd. You said, that you heard Lord Annesley say, Follow the Son of a Whore, and knock out his Brains?

A. Yes, I did.

Q. Give your Opinion whether any Pursuit happen'd in consequence of those Words?

A. My Opinion of the Matter is this, that I saw them pursue him as soon as Lord Annesley spoke; but I don't know whether they followed him out of Curiosity, or by my Lord Annesley's Meant; how can I know their Intention?

Mr. Digby. Was it not usual for a Crowd to follow him wherever he appeared?

A. Why, I can't tell; I never saw him till the Rioter before.

Q. Was he not followed to whatever Part of the Ground he went, the first Day?

A. I only saw him come, on the Ground from the Turnpike-Road, with his Servants, and I was followed him there, and don't think I saw him after that Day.

Q. When you came up, did you see Mr. Warren attempt to hurt Mr. Annesley?

A. Mr. Warren was alighting when I came up, and said some Words that made me think he meant to hurt him, in that Manner; and what Reason should I have to speak to him, to beg he would not hurt him, if he did not attempt it?

Q. What was it he did say, that made you imagine he intended to hurt him?

A. I think that he called out to Sir Kildare Barretts, I was in such a Hurry of Spirits, that I can't tell well what happened, but I think, by the Words Mr. Warren said, they were something tending to hurt Mr. Annesley; upon which I begged of him not to alight, and he did not, nor did not strike.

Q. Did you observe Lord Annesley's Dress that Day?

A. I can't tell you; I do not remember whether it was a plain or a laced Coat on.

Q. At the Time you heard Lord Annesley make use of the Words, you mention, how far was you from him?

A. No farther than I am from you.

Q. Was there not a great Crowd about him?

A. The Crowd was dispersed pretty much upon Mr. Annesley's going off.

Q. Can you judge whether they followed Mr. Annesley through Curiosity, or at my Lord's Instigation?

A. I could not judge whether through Curiosity, or at his Instigation, they followed, as soon as he ordered them.

Q. You said, that the Crowd went away and followed Mr. Annesley?

A. I don't say all; but a great many followed him.

Q. Don't you believe they attended him out of Curiosity?

A. I told you before, that I could not tell whether out of Curiosity, or at my Lord's Instigation.

Q. Did you know any other Person present to have heard those Words?

A. I did not stay to look about me, but rode off directly.

Q. But do you know any body that was then present?

A. I don't know any body that was by, for I did not stay to examine who was by.

Q. When you came up to him in the Ditch, would any Gentleman have done him Hurt, but for your Interposition?

A.

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1. If I had not thought Mr. Mac-Kercher was De-
signed to do him Hurt, I should not have said the
Words I said to him.

5. Mr. WILLIAM HACKETT.

Mr. Mamm, Where were you on the 14th and
15th of September last?

A. On the 14th I was in Dublin, and the 15th
I was at the Carrage.

Q. Do you know what happened the 16th be-
tween Mr. Mac-Kercher, Mr. Langley, and my
Lord Anglesey?

A. I was in a Tent drinking a Bottle of Wine
with some Gentlemen, and a Boy came in and said,
Thy young Earl was killed. Immediately on hear-
ing that, I ran out, got my Horse, and followed
them. There was a cry out, *His young Earl is
killed*; I could, and came up to Mr. Mac-Kercher,
and said, *Why don't you go on faster, Sir?* He said,
my Horse has no Speed. *Pray, Sir, do you follow
Mr. Annesley, and keep close to him till I come up
for he'll be murdered.* Upon that I followed as fast
as possible, but he was fallen in the Ditch, and
many about him before I got to him. I saw he
was very much hurt, upon which I attempted to
bleed him; he was quite senseless and speechless,
and though I made two Punctures in his Arm, he
would not bleed, and after that he was sent off to
Newbridge.

Q. Was he recovered before he was sent to New-
bridge?

A. He was not recovered.

Q. Did he say any thing?

A. He did not speak a Word.

Q. When did you see him after this?

A. I saw him that Night after.

Q. In what Condition did you find him then?

A. He had recovered his Senses.

Q. Did you stay any Time with him?

A. I lay there that Night.

Q. Do you remember any thing remarkable to
have happened further?

A. The next Morning I got up early and went
out to look at my Horse. And Mr. Mac-Kercher
was apprehensive of some Danger, and said over
Night they would go away very early. I went
into the House again after I had seen my Horse, and
a Boy came in and said, *The Play's over, surrounded,*
and that the Gentlemen in the House were *Way-laid*.
I told Mr. Mac-Kercher what the Boy said, upon
which he and some more went down Stairs to see
if it was true, and then they were assured of it.

Q. How do you know that?

A. I went out with them to the Ditch of the
Garden to see if we could perceive any People, and
then we saw them plainly. We came in again,
and then the Landlord told them the same thing.

Q. What followed after this?

A. Some time after that, Mr. Mac-Kercher was
taken upon a Warrant by one Lacy and a Con-
stable, and they came up Stairs together, and then
he took Mr. Gossey and Mr. Kennedy. Then we
got ready, and were going to *Near* to give in Bail
there; and when we were a good way from New-
bridge, one Angus Byrne came up in full Gallop
with a Gun in his Hand; Mr. Annesley was then
on one Side of me, and Mr. Gossey on the other;
and he laid his Gun upon his Thigh when he came
up, and he immediately turned about and gave his
Whip to a Countryman, came close to me, and
laid his Hand upon the Cock of the Gun. I can't
say positively I heard it snap, but he made a Noise
as if he cocked the Gun.

Q. How was the Gun directed?

A. The Muzzle was directed towards Mr. An-
nesley cross the Pommel of the Saddle.

Q. Did you perceive him touch the Cock of the
Gun?

1. I saw him put his Thumb upon the Top
of it.

Q. Can you say that he cocked it?

A. I can't be positive; I did see his foot, but I
heard it snap; upon which I made Mr. An-
nesley alight; I called out to the Coach to stop and
take him in, and Mr. Gossey came up to us.

Q. What kind of a Noise was it you heard?

A. It was the sound of a Gun cocking.

Q. Did Mr. Annesley alight and go into the
Coach?

A. He did.

Q. Who advised him to go into the Coach?

A. I did, and I believe Mr. Gossey did.

Q. Why so?

A. Because I thought that the Man intended to
shoot him.

Mr. Mac-Mamm. You said Byrne gave his
Whip away; do you say how he did it?

A. I did.

Q. Which what Intention did he do that?

A. I can't say.

Q. Was it in order to be the more ready to
shoot?

A. I suppose it must be so, Sir, it looks as if it
was.

Q. Did you say any thing when he gave away
his Whip?

A. Not a Word.

Q. In what manner did he give it away?

A. He rode up in a Hurry, gave his Whip to
the Man, and turned back immediately.

Q. What further happened after this?

A. After that we met some People on the Road,
who came from *Near* to meet us, and they con-
ducted us to *Near*.

Q. What became of Byrne?

A. He turned back immediately after Mr. An-
nesley got into the Coach.

Q. How soon after this Man had given away the
Whip, and put his Hand to the Gun, did Mr.
Annesley go into the Coach?

A. Immediately.

Q. Did you see him take his Whip again?

A. I did not.

Q. Did he go with you to *Near*?

A. He came up to us again, and went there
with us.

Q. What happened after you got to *Near*?

A. Then we were going to give in Bail for the
Gentlemen; Byrne came in and laid down the Gun
upon a Bed in the Room where the Gentlemen that
took the Gentlemen in Custody from the Constable
was; I think he was Sovereign of *Near*. I went
in, Mr. Carrick and that Gentleman was there,
and we were desirous to see if the Gun was load-
ed; and it being a Screw-barrelled Gun, imme-
diately I unfixed it, and took out eight Bullets.

Q. Who unloaded the Gun?

A. I unloaded it myself; unfixed it, and took
out the Shot.

Q. What kind of Shot?

A. Large Swan-shot.

Q. How many of them?

A. There were eight, I brought them in to the
Gentlemen.

Q. How big were they?

A. They were very large.

Q. How large? Describe them.

A. They were thus big [The Witness describes
them to be as big as the tip End of his little Finger.]
Mr. Bazel. Were they cast in a Mould, or
were they rough and uneven?

A. They were quite round.
Mr. Mac-Mamm. Tell what happened after
that?

A. Then the Sovereign took the Gun, and
Byrne was examined with what Intent he carried the
Gun, and whose it was? He said, *It belonged to
my Lord Anglesey, and he was to follow the Direc-*
tions.

that of Mr. Lacy, in order, if there was any Rescue intended, to prevent it. They then asked him what he was to do with it in case of a Rescue? He was going to answer, when Lacy stopped him, and said, for we assured it already, and answer no more questions.

Q. Had Lacy any Arms?

A. When the Men from Naas were coming up, Lacy took out a Pistol upon the Road, and I said to him, Sir, Mr. Mac-Kercher told you before we came out that we expected a Guard from Dublin or Naas, and you need not fear any Rescue.

Q. What kind of a Pistol was it?

A. It was a Pocket Pistol.

Mr. Bagen. Did you observe Lord Anglesey's Coach driving at any Person on the Carriage?

A. Really, Sir, I did not mind, I was in a Tent drinking a Glass of Wine.

Cross Examination.

Mr. Morgan. You say when you heard this Noise of the Gun, that the Muzzle was presented to Mr. Annisley?

A. Yes, the Gun lay upon the Pommel of the Saddle with the Muzzle towards him.

Q. Which Side of you was Byrne on?

A. The Left.

Q. And where was Mr. Annisley?

A. On the Right.

Q. You rode then between Mr. Annisley and Byrne, when Byrne came up?

A. I did.

Q. At the Time you heard this Noise of the Cocking, would not the Gun have shot you, or your Horse, if it had gone off?

A. I believe it possible, it might.

Q. Describe the Position of yourself?

A. I had Mr. Annisley on the right Hand, and Byrne drove upon the left Side of me, and I got close to Mr. Annisley.

Q. In which Hand had Byrne the Gun?

A. He had the Gun in his left Hand, and the Bridle in his right.

Q. You said it was pointed to Mr. Annisley?

A. It was lying on the Pommel of the Saddle across the Horse's Neck, with the Mouth towards him.

Q. Could he have shot him before he got into the Coach, if he had had a Mind?

A. To be sure he might, if he pleased; but it would not have been possible for him to have escaped if he had shot.

Q. If the Gun had gone off, must it have shot Mr. Annisley?

A. If it had gone off instantly as he came up, it might have shot me.

Q. What happened after Byrne came up?

A. Mr. Annisley alighted, and Mr. Cogsway came up, we called to the Coach to stop, and he went in, and then Byrne turn'd about and went back again.

Q. Don't you believe that Byrne carried that Gun to prevent a Rescue, and for no other Purpose?

A. How can I tell?

Q. What do you believe?

A. I protest, I can't tell what to believe.

Q. Had the Gentlemen any Arms in the Coach?

A. They had not.

Q. How many Servants attended Mr. Mac-Kercher and his Company at Naas?

A. I know there was the Groom, and a Footman, and I really can't recollect any more.

Q. Were there not five?

A. I can't recollect any more.

Q. Were the Servants arm'd there?

A. I know the Groom was.

Q. What did the People that came from Naas say when they came up?

A. I can't tell; some went on one Side of the Coach, some on the other, some on Horseback, and some on Foot.

Q. Did not you hear it rumoured by them, that we will attempt a Rescue?

A. I did not.

Q. Did not you hear them cautioned not to attempt a Rescue?

A. I did not indeed.

Q. Lacy took out a Pistol, you say?

A. He had a Pistol in his Hand when the Men came up.

Q. Did the Men say any thing to him about his having his Pistol in his Hand?

A. They did not.

Q. Did Lacy give any Reason for having that Pistol in his Hand?

A. He gave me no Reason for it.

Q. Did you hear him give a Reason to any Body?

A. I did not hear him give any Reason.

Q. Did not you hear him say that he took it out to prevent a Rescue?

A. I did not.

Q. What did you say to him?

A. I told him Mr. Mac-Kercher said, before we came out, that we expected People from Naas, and that there will be no Rescue?

Q. What did he say when you told him there would be no Rescue?

A. He made me no Answer to that.

Q. Before Byrne came up with the Gun, how were you and Mr. Annisley riding?

A. Mr. Annisley was first, a little Distance before me, immediately upon Byrne's coming up and giving the Whip to the Man, I got up to Mr. Annisley.

Q. Was Byrne nearer than you to Mr. Annisley at any Time?

A. I was nearer all the Time.

Q. How near was Byrne to you?

A. He was within a Yard of me.

Q. If the Gun had gone off, could it have shot Mr. Annisley or you?

A. It may as well have shot him as me; I believe it possible it might have shot me.

Q. On what Side of Mr. Annisley was you?

A. I was on the left Hand Side of him after I joined him.

Q. In what Position had Byrne the Gun at his coming up?

A. It was upon his Thigh, and immediately upon his coming up he laid it across the Pommel of the Saddle.

Mr. Spring. At the Time that the Gun was pointed towards you, where was Byrne's Right Hand?

A. I can't tell.

Q. Did not you say that his Right Hand was upon the Bridle?

A. At his coming up he had the Gun upon his Thigh in the left Hand, and the Whip and Reins in the other Hand; he gave his Whip away, and then held the Gun across the Pommel with his left Hand.

Q. In what Position was the Gun at his coming up?

A. The Gun was pointed up into the Air at his coming up.

Q. Was the Bridle in his Right Hand then?

A. It must have been in the Right Hand, because the Gun was in the Left.

Q. Was the Time Byrne came up any considerable Time before you met the People coming from Naas?

A. Yes, it was.

Q. How long?

A. I can't tell.

Q. Was it ten Minutes?

A. Yes, it was, and more.

Q. A Quarter of an Hour?

A. I can't tell exactly.

Q. What was it Byrne did after he came up?

A. He immediately gave the Whip away, and came

came up close to us, and immediately upon Mr. *Amesley*'s alighting and going into the Coach, he turned back.

Q. Did you ever see *Byrne* before?

A. I never saw him in my life before.

Q. Did he say any thing to you?

A. He did not speak to me.

Q. Did he know you at that Time?

A. He did not appear to know me.

Q. Did you know him?

A. I did not know his Name till we came to

Naas.

Q. How long after *Byrne* turned back was it that he followed you to *Naas*?

A. A good while.

Q. Was it an Hour?

A. I can't say.

Q. Half an Hour?

A. To the best of my Knowledge it was thereabouts.

Q. Was it after the People met you?

A. I believe it was, I cannot be positive.

Q. How long after?

A. I can't tell exactly how long it was.

6. *Mr. WILLIAM GOOSTRY,*

Mr. Mac-Manu. Were you at the *Carragh* last September?

A. I was there the first and last Day of the Race.

Q. Give an Account of what happened there; tell the whole Affair?

A. The 14th of September last we went to the *Carragh*, and there was but one Horse to run that Day, and there being no great Diversion, we rode a little up and down the Course that Day, and came off again.

Q. From what Place did you go to the *Carragh*?

A. We went from *Dublin* to *Newbridge-lin*, and from thence to the *Carragh*.

Q. Did any thing remarkable happen to you on the 14th?

A. We saw Lord *Anglesy* and other Gentlemen standing at a Tent as we rode up the *Carragh*, and when we were coming back again from the Course, just before we came to the End of it, Lord *Anglesy* said, See that Scoundrel *Mac-Kercher*, though he now looks like a Gentleman, that *Car* he has upon his Back, I saw not a Month ago in *Monmouth-Street*. *Mr. Mac-Kercher* said, Don't let us take any Notice of it, it is not worth while; so we rode off the Ground, and went to *Newbridge*; that was all that happened that Day. The next Day was *Thursday*; there was no Race that Day; and we went to Gentlemen's Houses in the Neighbourhood, where *Mr. Amesley* was known when he was young. On *Friday* we went to the Race again, and just as the first Heat was over, we came upon the *Carragh*, and went up to the Company. After some little Stay there, we left that, and rode on further; and as we were riding, the Coachman of Lord *Anglesy* came full gallop through the Middle of us; we got out of his Way as fast as we could; he turned short about again, drove at us, and we got on the other Side of the Rail to avoid him, and he came there with his Whip, and pointed to *Mr. Amesley*, crying, *Shoe-boy, that's he, Shoe-black*. Presently he came to us again.—

Court. Which Side of the Rail?

A. The Outside of the Rail, my Lord—and drove at us there. *Mr. Mac-Kercher* then said, There's no bearing of this, we must either go out of the Course, or else speak to my Lord to chastise him.

Q. Were there other People on the other Side of the Rail besides you?

A. There were other People there besides us, but very few.

D. Go on.

A. *Mr. Mac-Kercher* went up and down to find my Lord *Anglesy*, and we went up along with him to the Waiting-Post, and there my Lord and others were standing; and *Mr. Amesley* was rather behind, out of the Crowd; five or six

Horse's Lengths behind he might be: So *Mr. Mac-Kercher* said, with a low Voice, I want to speak with your Lordship. My Lord said, I have no Pistol, and was startled, and changed Colour; he said further, I thought, This was no Time and Place, he said further, to talk thus, I have no Pistol. *Mr. Mac-Kercher* said, For what I have to say to your Lordship, every Time and Place is proper; for all that I have to say, is against one of your Servants that used a Gentleman ill, or Words to that Effect.

My Lord asked, Who the Gentleman was? *Mr. Mac-Kercher* said, That's the Gentleman, *Mr. Annelsy*. My Lord hesitated a little, and said, He was no Gentleman, but that he was a Boyard. *Mr. Mac-Kercher* said further, We expect your Lordship will turn your Servant away on the Field, as it is a publick affront. My Lord then flew into a Passion, and called *Mr. Mac-Kercher* a great many opprobrious Names; and *Mr. Mac-Kercher* told him, He bid; with that *Mr. Mac-Kercher* said, Your Lordship durst not single yourself out, and tell me so. With that *Mr. Francis Amesley* up with his Whip and struck *Mr. Mac-Kercher* on his Forehead, and with that a little Blood came, and his Forehead swelled very much. Immediately upon that, I had a little Whip in my Hand, and I struck *Mr. Amesley*. Upon this it was over, and *Mr. Mac-Kercher* said, Come, we'll go away. There were some other Words passed afterwards between Lord *Anglesy* and *Mr. Mac-Kercher*, and *Mr. Mac-Kercher* said, turning to go away, Come along Goostry, and Kennedy, it is not worth while to talk to a Man who dare affront a Gentleman, and refuse him Satisfaction. I could not get away very readily, being in a Crowd of People; and I believe a Minute or two passed before any thing further happened at all. When I was turning my Horse to ride off, There's Goostry, says my Lord, another of the Rogues, as great a Rogue as any in Ireland, knock him down. Upon which *Mr. Francis Amesley* struck me again, and a great many more struck me. I was stunn'd with the first Blow, and bled so prodigiously, that I was all over Blood. I got a Blow here [on his Wrist] that swell'd as big as an Egg; and I had fallen off my Horse, if I had not been supported by a Crowd on each Side, who were so near me that I could not fall.

Q. What Distance of Time was there between the first Blow and the second, given by *Mr. Francis Amesley*?

A. It was two Minutes after the first Stroke, that *Mr. Amesley* struck again.

Q. Did he strike you of himself, or by any Directions from any body?

A. He did not strike me till Lord *Anglesy* ordered him.

Q. Did you leave the *Carragh* immediately upon that?

A. I did not; I thought the Quarrel had been over, and had a mind to stay to see the Sport. There were some English Horses to run, and I clapp'd my Handkerchief to my Wound, that I might stay and see the Diversion. I rode forward on the Ground, and immediately I heard the Pretender, as they call'd *Mr. Amesley*, was killed. Thinks I, I'll go down to the Starting-Post to see what's the Matter, and there I heard that *Mr. Amesley* was in the Lane leading to *Newbridge*; I rode after him, and when I came about half way down the Lane, I saw a great Crowd of People about him, and found him lying senseless, his Arm stripped up in order to bleed him, but he would not bleed. I got a Chaise that was coming

...with him to lead him to the Court, and the Fellow said he was going to Dublin. I spoke to the Sergeant, and he said he would let the Fellow come between them and the Court, and said to Mr. Kerker, 'Let me hear him, and the Court to prevent any mischief.' When the Fellow saw that he would be sent back again, he was so far gone as to leave you, give those Directions? ...
Q. Was he impossible to speak to?
A. Yes, we were there any other thing but Arms besides that Man? ...
Q. What happened after that?
A. As soon as we had secured the Coach, the Fellow said back, and Lay kept behind, and just as they saw the Men, People coming, they galloped up again, and they were with us to Nass. ...
Q. What happened when you came to Nass?
A. Then we came to examine the Man that had the Gun, and sent for the Foreman, and desired him to examine that Man; so he was asked, 'What Gun did you have?' He said, 'Lord Angles's.' He then was asked, 'What was he to do with it?' He said, 'I put him down.' He then was asked, 'What Direction?' He said, 'He fired in case of Reason, he was to make use of it.' We asked, 'If Lay gave him any Direction?' He said, 'Yes, we asked them, What Direction? Before he could answer, Lay stepped in, and had him not answer any other Question.' ...
Q. Did you give in Security there?
A. No, we went before the Justice of Peace, and gave in Bail. ...
Q. You said that Mr. Francis Ampley struck Mr. Mac-Kerker?
A. Yes. ...
Q. Did Mr. Mac-Kerker, or any Body else, strike Mr. Ampley before he struck him?
A. He did not, nor no Body else. ...
Q. Did you strike him?
A. I struck him, after he struck Mr. Mac-Kerker. ...
Q. With what?
A. With a Whip, upon the striking Mr. Mac-Kerker. ...
Q. Did you apprehend that you were a continued one, or that it was ceased?
A. The Beginning of the quarrel was, Mr. Mac-Kerker and Lord Angles's speaking together, and after Mr. Francis Ampley struck, it ceased for about two Minutes. ...

Cross Examination.

Mr. Spring. Pray, Sir, do you recollect the particular Words Lord Angles's made use of to Mr. Francis Ampley before he struck you?

A. I did not know Mr. Ampley at that Time, but a Gentleman said, that it was he that struck me. ...
Q. When Lord Angles's used the opprobrious Language you mentioned, did not he say to Mr. Ampley, 'There's he that struck you?' ...
Q. I can't say that I did hear him say that. ...
Q. Were not you near him?
A. We were Side by Side; Mr. Francis Ampley and I faced Mr. Mac-Kerker. ...
Q. Might not he have received a Blow from you without knowing who gave him that Blow?
A. Yes, I believe he might; and did not know, I believe, that I struck him; I dare say he did not see me, because he rode forwards to strike Mr. Mac-Kerker. ...
Q. Do you believe he might have said any Lord who struck him?
A. I can't tell.

Q. Who went in the Coach?
A. Mr. Kennedy, Mr. Mac-Kerker and Mr. Carriel, went into the Coach; Mr. Ampley, Mr. Hacker and I rode on Horseback; when we had gone a little way, riding almost all three a-breast, I saw several People follow, and a Fellow came galloping after us; I heard the Horse coming, and I looked, and saw a Fellow coming up with a Gun in his hand, in a green Coat, and a luffy Man. I said, 'I suspected that Man; coming after us in that manner could mean.' So I dropped behind Mr. Hacker and Mr. Ampley a little, and let the Fellow come between us; he came close up to Mr. Ampley, and just as he was dropping back, I got up. Immediately I heard the Gun cock, as I thought, and I instantly dropped between him and Mr. Ampley, and then Mr. Hacker and I called out, 'Mr. Ampley, You'll be shot, get into the Coach this Minute, or they follow.'

1. *Thurley, my love.*
D. *Wd. p. 2.*

Q. Then Long rode'd out to get my Dinner, and when I had finish'd, there was a bucket of Powder, and Bob Moulton brought it in.

7. The Drawer.—And after that Mr. Long called me into the Parlor, and made me drink wine, and eat bread and wine.

Mr. Lay and Mr. Poth of the County of Carroll; they gave me several Chicks of Wine each of them.—Lay said I went up the Carriage on Friday, and we were at the Cartage a good while before the Running; and after the first Heat was over, and the Horses were flaring the second Heat, Mr. Lay and I were standing at the Starting-post; saying G—d, I'll hold you a Crown that yonder is Mac-Kerker and the Pretender. Where, says I? There, says he. So they pick'd up till they came almost facing the Starting-post, and turn'd off to the Right towards the Winning-post. Lay said, he would show them to me. With all my Heart, said I: So we rode after them and cro'd them, and, says he, That's Mac-Kerker, and that's the Pretender; Would you know them again? I would, to be sure, says I. Take notice, says he, that you may know them again. So we cro'd them again, we came to the Starting-post, and the Horses being fluried, I rode to the round Hill to see the Heat, and when the Heat was over, I went into a Tent and drank a Pot of Beer.

Mr. Howard. When *Lady* desired you to take notice of them, and asked whether you would not know them again, was there any Talk between any Persons about bloody Noses?

A. Ya. He said, They will have good Luck if they have not broken Heads and bloody Noses before they leave this Ground.

Q. Was that before, or after he desired you to take notice of them?

*A. It was after.
Di Now, go on*

4. So then, I tell you, we came to the Starting-post, and went round the Course, and I went into a Tent to drink, and while I was there I heard there was a Quarrel; and hearing that, I got up and saw People galloping down towards *Ballymurray*; and when the Race was over, I went to *Cornwall's* that Night again: So, coming there, I did put up my Horse, and had him turn'd out to Grass; and my Lord *Arthur's* Keeper, *Arthur Coote*, met me: We went in and call'd for a Bowl of Punch; we drank about the third Part of it, and Mr. *Lady* came in. So, *Angus*, says he. *Your Servant, Mr. Lady, Will you sit down*, says I, *and take a Glass of Punch?* I came in, says he, *with Desire to drink with you*. So we drank till the Bowl was out, and I call'd to the Drawer to get another. Says Mr. *Lady, Angus, You shall drink no more, for you shall go to bed, I shall wait you in the Morning upon earneſt Business*. So he went up Stairs and saw me go to bed.

Q. Pray, do you know of any Pistols or Fire-Arms that were a charging that Night?

A. I will tell you by and by.

A. Then, Sir, when I went to bed I lay there till in the Morning *Lazy* came and call'd me up, bewixt *One* and *two* o' Clock; I got up and I dress'd myself, and he waited till I dress'd myself.

Count. What Time did you go to bed?
A. I went to bed between *Yan* and *Eleven* o' Clock, I believe.—I got up, he brought me down Spain into the Kitchen, where *Mr. Yans* was, and several other Gentlemen, and they were drinking and priming Arms when I came into the Kitchen.

2. Who were they?
1. There was Mr. *Yam*, *Carver* to the Dancing-master, one *Williams* of *Piscataway*, a Gentleman

they called Captain Stewart, and my Lord's Men.

Q. What were they doing?
A. They were charging and priming of Arms.

Q. What Arms?
A. Pistols and small Pieces.

Q. What Piece?
A. A Fuzee, travelling Piece.

D. Well, go on.

A. Mr. Jones said me, *Would I drink?* I told him, I would: so the Drawer brought a Mug of Ale, and Mr. Jones afterwards gave me a Cope of Pilsok. *What am I to do with these, says I, You are to go along, says he, with Mr. Lacy, and you are to take his Directions, he'll tell you what to do.* Then I told him, my Horse is at Grass, I must find out for him before I can go. Mr. Jones said, *You must ride my Horse.* I then called for my Sattout-Coat. He said, I must not ride in it, but go as I was, it will be comfortable to you.

2. For what Reason?

"*No*. I can't tell.—So, with that, the Groom went out and saddled Mr. Jan's Horse, and the other Horses, and Mr. *Chapman*, my Lord's Gentlemen, and *Michael Doyle* the Groom, and Mr. *Lacy*, and I went out. I got Mr. Jan's Horse, and mounted him in the Road at the End of the Scabbie, and they all got on Horseback; and as we got to the Door, there was a Number of Fellows with Pitch-forks and Staves, I believe of many of them; and we turned along the Road towards *Kenna*, and when we came as far as *Coghlumartin*; then I said *Lacy*, *Where are we going?* He said, *to Newbridge, to take Mr. Mac-Kercher, Mr. Goftrey, and Mr. Kennedy, for the Assize at the Curragh, for striking Mr. Francis Annellee and my Lord.* I said, *I'm sorry you did not tell me this before, for I'm sorry to have any Hand in it.* Sure, said *Lacy*, *you are not afraid, you need not fear, what are they to you?* *What are you to expect from them?* If you wanted me to go with you, I'd go farther than this with you. So we went forward to *Newbridge*, and when we came near the House, the Signal was given, that none of the Fellows should go to the House but one *Brennan*, a Tenant of Mr. *Mussey's* of *Ballygowan*; as I heard after, the Constable, Mr. *Lacy*, and *Le...*

N. I can't tell his Name.——So when we went in, *Lacy* went into a little Room on the Left-Hand-Side of the Door, call'd for White-wine, ask'd me to come in, and we drank it together; and *Brennan* and the Constable went into a Room on the Right-Hand as you go up Stairs, and got Ale, and they were there for a while; and by and by comes down Stairs Mr. *Mac-Kercher*, about half an Hour after we were there; and he came down, and that Time I pointed at the Constable, that That was Mr. *Mac-Kercher*, and the Constable came up, and I said, *That's he, that's your Prisoner, take him.* So the Constable came up and said, *You are the King's Prisoner.* With that *Lacy* came out and told him, *he had a Warrant against him for an assault on Lord Angleley, and Lacy and the Constable went up Stairs with him; I did not: And the other Gentlemen above Stairs were taken.* In about an Hour Mr. *Lacy* sent *Chapman* and the Groom to my Lord, to let him know that they were taken; and *Doyl*, the Groom, left the Gun and the Pistol he had behind, by *Lacy's* Directions. So, in some Time after, I believe an Hour, the Gentlemen got into the Coach, and *Brennan* got *Doyl's* Pistol and put it in his Bosom; Mr. *Lacy* had his Cane in his Pocket, and took the Gun in his Hand, and a quarter of a Mile beyond the Bridge gave me the Gun.

Q. How near the Inn was this Bridge?
A. As near as from this to the Market-boys.—
So, a little while after, as I said, he gave me the
Gun: *Here's this Gun for you, says he, your Bread*
is baked, you shall be provided for while you live, and,
says he, you are to life this Things just as the Pro-
viders

under, to put that up there; we have things to carry to off, and more for, if we are taken, we'll make a business of it, we have things enough here to prove it for us.

D. Repeat that. We said that he told us you.

A. Ay, says he, you said to be proved for, your Broad is loaded, for at home, and more for, we have good Harjis to carry to off, and if we are taken, we'll make it a business, we have things to prove it for us, and there's more that you prove it against us.

Mr. Howard. Why has he given you the Gun, what did he desire you to do?

A. He desired me to direct Mr. Amusey, — I will say, I, we have any hand in it for all that world.

Q. What followed after that?

A. I believe we went about as far as Morrisstown, when there was a White man in the Road. As soon as Mr. Lacy saw them, they are coming, says he, to resist Mr. Amusey, now's your time, there's no fear, we can make it a fair Refuse, and go you on one Side of the Coach, and I'll go on the other, and if you miss him, I'll hit him. With that he took my Pistol out of my Holster. What do you take my Pistol for, said I? He said, you have another Pistol, and we'll have three Shots a-piece, says he. I have it not, for Brexman hit it, says I, and I'll have no hand at all in any Man's Blood, and will not commit Murder. So I came up to the Coach-Door, and he to the other, and I did no more, and he fell back again.

Q. He made a further Application to you when he saw the People coming from towards Nass?

A. Yes, he did.

Q. Where was Mr. Amusey at this Time, on Horshack, or in the Coach?

A. In the Coach.

Q. How soon before this, of seeing the People coming from Nass, was it that Mr. Amusey got into the Coach?

A. I believe about a Mile beyond that Place, where we saw the People, but I cannot be sure.

Q. Well now, while Lacy was persuading of you by these Inducements and Promises to shoot Mr. Amusey, pray how many Miles might you have gone along with one another from the first time that he began to discover this Mistake, and give you Directions?

A. I believe near three Miles from Newbridge, better than half-way, before the People from Nass met us, there or thereabouts.

Q. You had gone a Mile after Mr. Amusey got into the Coach before you saw the People?

A. Yes.

Q. Whereabouts was it that Lacy first applied to you to persuade you to shoot Mr. Amusey?

A. He began that Minute after he gave me the Gun, and he held the Discourse till Mr. Amusey went into the Coach.

Q. After that did he renew his Applications?

A. He told me, that first, I did not fear, that I never was a Coward, and that I need not fear now, and that I might be done for as well as any Man of the Walk.

Q. By whom, pray?

A. He told me by my Lord Amusey.

Q. Was there any mention of any thing, upon your Refusal, to contrive your Escape?

A. He said, That I need not fear if he was killed, for, says he, we have two good Harjis to carry us off, and we have three Shots a-piece, and shall be brought off in safe and sure taken.

Q. By whose means did he promise you should be carried off?

A. He said these very Words; when I told him I would not do it, not have any hand in it, he said, You need not fear, for you'll be done for, never fear.

Q. Did you get to Nass?

A. Yes.

Q. Was you brought to any Magistrate there?

A. We were brought into the House of Drute there, and I went out with the two Horses to the

Dublin; and I came by and gave the Gun to a Friend to put up, and went into a Beggar-Shop, and left it to that Dealer. By, in Dublin, there after the Execution came, and examined, who gave the Gun? I told them, Mr. Lacy. They said, if it was my Lord's Gun? I told them, it was, never fear, never fear. And what was it?

A. It was my Lord's.

Q. How long have you known the Gun?

A. I have known it these five Years.

Q. Is it a Gun of Value?

A. It is a Scotch Gun.

Q. Did you charge that Gun?

A. It was not I charged it.

Q. Do you know who did?

A. I can't tell who did.

D. Well, go on.

A. So then they asked me, What was I to do with it? Why, says I, I was to be directed by Mr. Lacy, and so do what he would have me. So then Lacy said, You are not to tell any thing to any Man here. Then I stay'd there till four o'clock, and I thought to go back to Kilkenny-Briggs for my Walter; and my Lord's Man comes up to me to Drute's House and said, You must go to Dublin. Says I, John, I'll not go. Says he, My Lord says, you must follow him to Rathcoole. So I went, and my Lord was going off as I got there, Mr. Lacy gave me a Shilling to get my Dinner, and Lacy stay'd with me. We went on to Dublin together, and I was hired the next Day by Lacy for the same Wage I had before from my Lord.

Mr. Howard. What Day was it Lord Amusey spoke to you at Kilkenny-Briggs?

A. Thursday.

Q. Was this apart, or in the Place he met you in?

A. In private, in the Backside; I was standing in the Entry leading from the Kitchen, and my Lord was in the Backside, he call'd me, and said the Words I have told you before.

Q. Did he take you privately or not?

A. He took me about as far as from this to the Door, into the Back-Yard.

Q. Was any Person present when he spoke to you?

A. Nobody was there then.

Q. You did not charge any of the Arms?

A. I did not.

Q. Do you know who charged the Gun?

A. I can't tell.

Q. Did not you see People charging Arms that Morning?

A. I saw People in the Kitchen; they were priming of them.

Q. Did you see any body charge them?

A. I saw Mr. Lacy charge them; it was he gave me the Case of Pistol.

Mr. Digby. I would ask him whether, as Lacy gave him the Pistol, he got any, and what Directions from Lacy?

Court.] He said, I was to follow Lacy's Directions, and I was to follow what he bid me.

Cross Examination.

Mr. Morgan. Did you refuse Lacy to have your Hand in Blood?

A. I did.

Q. Did not you consent to murder Mr. Amusey?

A. I never did.

Q. Did you not ride up to Mr. Hacket and Mr. Amusey, with your Gun rested upon your Saddle?

A. I did, and had it this Way on my Thigh.

Q. On what Account did you do so?

A. I rode up as Mr. Amusey was going into the Coach.

Q. How did you hold the Gun then?

A. It was upon my Thigh.

Q. Was your Hand upon the Cock?

the next Day to Dublin, and got up at five o'clock at the York-Boys. I went to my Lord's House, and when I saw my Lord, he said to me, "What I want you to do is to go to the Coachman's, and see if he can find out the name of the Coachman who was with me on the Day I went to him for some Money, and found he was gone; and I went to him to Duncannon. Sure, says I to one of the Servants, he will tell me, and he will tell me where he is. He is gone to a Blacking-Coach, and is staying till he can go to work. I accordingly went and met him, and I walk'd in my Boots. He said, 'What brought me there, and made me ever Best?' I told him, because I had no other way to go, and he would give me none; and seeing that, I asked the Coachman to carry me to Dublin. My Lord said, 'Don't go, and follow him to Bray, and then I should like to see him, and carry the Hounds to my Lord Tyrone; and then he could make a Present of me and some of the Coachman's to England. After this, the Coachman told him I made a great Noise for Money in Dublin; so my Lord came out again and called me Mr. Byrne; when he called me Mr. I thought he was angry with me, and he came and gave me a Chuck under the Chin, and said, 'You Villain, do you make a Noise about my House? get about your Business. Get up, his Nephew, had me not go away, but to beg pardon, and I'd get half a Guinea; and afterwards my Lord came out and gave me half a Guinea; and, follow me to Bray, says he.

Q. Did you ever threaten my Lord, and tell him, *It should be worse for him if he did not pay your Money?*

A. I never did.

Q. Do you know *Thomas Stanley*?

A. I do.

Q. Is he any Relation to your Wife?

A. I don't know but he was a Relation of my Wife's.

Q. What Character has he?

A. Aye, he's a very honest Man.

Q. Mrs. *Spring*, I desire the jury may take Notice he says *Stanley* is a very honest Man.

Q. Mr. *Mac-Mann*. He does so; but every body may easily see in what manner he said it.

Q. *Winey*. But he's a noted Villain in Dublin, and as any Man in Ireland.

Q. Do you know Mr. *Francis Ampley*?

A. I do very well.

Q. Had you any Conversation with him returning from the *Wexford* Affairs about Lord *Mykleby*?

A. I had; I told him at *Killallen-Bridge* the gross Usage I had from my Lord, that I got no Money; and he said he would speak to Counsellor *Aungley*, and, says he, you shall be ordered your Wages.

Q. Did not you make use of some threatening Expressions if you were not paid?

A. I made no Use of any threatening Expressions.

Q. Was you ever in England?

A. I was.

Q. How long was it that you went there after this Conversation?

A. About a Month, I'm sure; I can't tell what Time, for I have not the Day of the Month; I went soon after, but can't tell the Time.

Q. What Business carried you to England?

A. I tell you, First, I went there to see two

Persons I have never seen, and a Gentleman I have married myself; Secondly, I had the offer of three hundred Guineas, and I told you that I was in this Country, and not to go for my Wife, but was that I went to England to see the Coachman's Friend, and try if I could clear myself, and live in what way I could.

Q. I have a Gentleman lives in *County Wick*, he's in the Guards; one of my Sisters lives at *St. Mary's*, next Door to the *Hop* and *Grays*; the other Sister is married to a *Chapman*; he's *MD*.

Q. Was not this in April you went over?

A. I can't swear to the Month, nor the Day I left Ireland.

Q. How many Weeks after you left Lord *Ampley* was you in Dublin?

A. I can't tell.

Q. Was it a Month?

A. I can't swear; I believe it was a Month.

Q. Do you know Mr. *Mac-Kercher*?

A. I do.

Q. Did you see him in England?

A. I did, in London.

Q. How long was you in London before you saw him?

A. I believe ten Days before I saw him.

Q. Was you inquired after by him, or did you inquire for him?

A. Indeed, I inquired for him.

Q. When you met him, did not you give him the Account you have mentioned there?

A. I gave him no Account; I gave what was a Gentleman that drew them in Dublin.

Q. What Gentleman?

A. To the best of my Knowledge his Name is *Baily*.

Q. For what Reason was it that you drew disclosed the Matter till April?

A. I would not then; but only that the Indignities were found against me in the County of *Wick*.

Q. Who is *Baily*?

A. An Attorney.

Q. Where does he live?

A. I can't tell the Place; to the best of my Knowledge he lives in *Golden-Lane*.

Q. Is not he now in this County?

A. I can't tell; I have not seen him to my Knowledge.

Q. Where do you say he lives?

A. To the best of my Knowledge his Office is in *Golden-Lane*.

Q. Is he a young Man, or middle-aged?

A. He is a young Man, a middle-aged Man, tall and long visaged.

Q. How came you to find him?

A. I sent a Man for him.

Q. Were you acquainted with him then?

A. I was acquainted with him two Days or three before.

Q. How came you acquainted with him?

A. A Friend of mine recommended me to him, that he was fit for my Service, that I should employ him to give my Testimony.

Q. Where did he draw this Testimony for you?

A. He drew it for me in the House of *Robert Kennedy* on the *Blind-Jury*.

Q. Who was present when he drew it?

A. No body was present but himself and me.

Q. Who wrote the Words you said?

A. He is the Person that wrote the Words himself.

Q. Was Mr. *Mac-Kercher* in England when this was done?

A. He was.

Q. Was there no Draught of what you had to say drawn by your Directions before Mr. *Baily* drew that, by any one else?

A. I had myself drawn one before that.

1. I don't know the Master in *Chancery*, I forget his Name.
 2. He lives about *Chancery-lane*.
 1. The first Time!
 2. The first Time and second Time too.
 1. Did you see Mr. *Baily* any Draught, but what you gave out of your Mouth?
 1. I did not, Sir.
 2. What did you do with your first Draught?
 1. It was tore to Pieces.
 2. Had you any Paper drawn for you in *England*?
 1. Not for me, indeed.
 2. Have you any Paper of Instructions about you what you were to swear?
 1. I have not.
 2. Did you swear to the Examinations you gave in this Kingdom?
 1. I did.
 2. Before whom?
 1. I don't know the Master in *Chancery*, I forget his Name.
 2. Where does he live?
 1. He lives about *Chancery-lane*.
 2. Is Mr. *Baily* here?
 1. I can't say that he is here.
 2. Who advised you to go to that Master in *Chancery*?
 1. Myself.
 2. Did any body attend you there?
 1. Mr. *Baily* attended me.
 2. Did he read it, and sign it?
 1. He did.
 2. Who paid for that Swearing?
 1. I did, I borrowed the Money from Mr. *Robert Kennedy*.
 2. Where did you live from the Time you left Lord *Angley* till you lived with him again?
 1. I lived with Mr. *Colebough*, and Mr. *Gerard* in *Dublin*, and Mr. *Marble*.
 2. How long did you live with Mr. *Colebough*?
 1. About seven Months.
 2. Where did you live after that?
 1. Lord *Angley* put me in the *Marshalsea*.
 2. For what?
 1. I'll tell you for what; I came to demand my Wages and my Wife's Wages, that lived with him seven Months, and my Lord would give me no Money at *Bury*, but said, my Wife was the vilest Woman upon the Earth; and I said I was very sorry his Lordship thought so, and he gave me a Shake, and said, my Children were not my own.
 2. But what did he put you in the *Marshalsea* for?
 1. He put me in for a *Sham Writ* for 50 *l.* and I can't tell what.
 2. Did you owe him any Money?
 1. No; I owed him none; he owed me my own and my Wife's Wages.
 2. How long was it after, that you were to kill Mr. *Angley*?
 1. It is near three Years, the latter End of this Month it will be three Years.
 2. What was the Reason of your giving your Whip to the Constable?
 1. Because that I could not keep the Whip, the Gun and Bridle in one Hand.
 2. How long had you had the Gun before you gave the Whip to the Constable?
 1. I did not go, I believe, a Quarter of a Mile before I gave it to him.
 2. You carried them that Way?
 1. I did; but they were troublesome to me.
 2. You put the Gun, you say, out of your right Hand into the left?
 1. I did.
 2. For what Reason?
 1. Mr. *Lay* was at me to fire, I would not, and I did it to set the Cock down again.
 2. Are you right-handed?
 1. I am, my Lord.

2. When you go a *Fowling*, on which Side do you put your Gun? Is it for your *behind*?
 1. On my right.
 2. Always?
 1. Always, my Lord.
 2. Your Gun was at first held upwards?
 1. Yes.
 2. Did you after that level it?
 1. I held it this Way; directly forement the Coach-door the Gun pointed.
 2. When you flitted the Gun out of your right Hand into your left, and laid it upon your Thigh, how stood the Muzzle?
 1. It stood this Way.
 2. Did it point towards Mr. *Fichten*, or Mr. *Angley*?
 1. I can't tell; but I had it this Way facing the Coach-door.
 2. Did you never rest it upon the Pommel of the Saddle?
 1. I flitted it backwards and forwards.
 2. After you told *Lay* you would not be concerned in Blood, how long did you continue to ride with him?
 1. All along.
 2. Did you see Mr. *Angley* alight?
 1. I did.
 2. Who was by him then?
 1. I can't tell the Man's Name.
 2. What Posture had you the Gun in?
 1. This Way, [Holding it in his left Hand, with the Muzzle cocked upwards upon his arm.]
 Mr. *Harward*. My Lord's House Steward *Michael Lay*, is indicted, we have had Warrants against him, and cannot find him; I want to know from this Witness where this *Michael Lay* now is, in whole Service, or upon whose Estate he lives.
 Mr. *Malone*. He's now in this Town, and you shall have him.
 Mr. *Harward*. Pay, Gentlemen, where is he?
 Mr. *Malone*. You shall have him; we'll bring him hither before this Trial is over. [He never was produced.]
 Angus *Byrne*. I shall wait three Hours in Court till I see him and talk to him.

STATE of the CASE.

Mr. *Spring*. May it please your Lordship, and you, Gentlemen of the Jury, I am of Council with the Noble Earl and the other Travellers of these several Indictments.
 The Travellers, my Lord, stand charged with a Crime, which upon the Face of the Indictments appears to be no more than an ordinary Assault; but this Offence, though in its Nature one of the lowest which the Law takes Notice of, has by infinite Skill and Address been heightened into a Crime of a most enormous Size; but I hope we shall be able to shew your Lordship and the Gentlemen of the Jury, that there is not the least Foundation in Truth for the Light, in which the Council for the Prosecutors have endeavoured to put this Transaction.
 Our Case, my Lord, will appear to be this; that the Noble Earl and his Friends, who are now upon their Trials, happened to be on the 16th of September last on the *Carriage of Kildare*, to partake of the Diversions of the Place: Thither repairs Mr. *James Amuseley*, attended by his Friends, Mr. *Mac-Kercher*, and the other Prosecutors, whether with Intent to meet the Earl, and take hold of any Occasion that might offer of a Quarrel with him, their subsequent Behaviour will best explain.
 The Earl and his Friends will appear to your Lordship to have repaired to this Race-Place without any Preparation for what they did not expect a Battle; they all go unarmed, as Gentlemen always do to a Horse-race, when nothing is intended but to partake of the Diversions of the Day. The

The Professor, one of whom had, as he pretended, received ill Treatment from the Dogs before from the Earl, and had consequently reason to apprehend the like Treatment upon the next Interview, go to that very Place, where they were thus ill used, and where it was very notorious the Earl was: But they go prepared for every Event, prepared for the worst, which they had reason to expect from the Earl's pretended Mischivour of the 14th: they go in a hostile Manner, in serious posture, no less than five or six of them armed with sword and pistol, attended by a numerous Train of Servants armed in like manner with Pistols, cutting swords, Car-bines, and Blunderbusses; they go thus armed and attended to see a common Horse-race. A Race, my Lord, is a Place of Entertainment, to which Gentlemen repair without any such hostile Preparations: I can't tell indeed what may be done in North-Britain, but in England and Ireland we have no such Custom; the usual Manner of riding to Races, is on a Hunting Saddle, and with a Snaffle Bit.

It will appear, my Lord, by positive Testimony, that the Words charged on Lord Anglesey, of the 14th of September, as spoken to Mr. Mac-Kercher, *He's a Dog, a Scoundrel and a Villain, and the Devil you see on his Back, I saw not a Month ago in Montmouth-Street*, were not the Words of Lord Anglesey, they were Words uttered by another Person. These Gentlemen, two Days after these Words they complain of were spoken, repaired to this same Carriage. And here I must beg Leave once more to observe a Circumstance in itself most extraordinary, That the Prosecutors, aware of ill Treatment, aware that my Lord Anglesey intended to breed a Quarrel with them, alarm'd, as they pretend, with the grossest Insolence that could be offered to a Gentleman and a Man of Honour, go to the same Place where they apprehended they had reason to expect the like or worse Treatment. It might be expected, if these Gentlemen had not imagined they might have derived some Benefit, some Reputation to their Cause, I mean to Mr. Anglesey's Claim to the Earldom and Estate of Anglesey, that they might have avoided a Quarrel with the Earl, however disposed he might have been to enter into one; but these Gentlemen, who had nothing in View but a Quarrel, go there designedly to seek one, which they at last brought upon themselves by their own Means, and without even the Concurrence of the Earl.

It will appear to your Lordship, that these Gentlemen, taking some Offence at some Expectations charged upon the Coachman of Lord Anglesey, taking Offence at his driving on the Plain, as he had a Right to do, go to my Lord and demand publick Satisfaction for the Offence his Coachman had given, by stripping him in the Field. It will appear, that Mr. Mac-Kercher seeks out for Lord Anglesey, whom with Difficuly he found; that he was cautioned and advised not to do it; yet it will appear that he goes to Lord Anglesey; that he, who is the known Supporter of Mr. Anglesey, calls to Lord Anglesey for publick Satisfaction for an Injury not done to himself, but to another; that as the Champion of Mr. Anglesey, considering himself as well the Guardian of this Gentleman's Honour, as the Assister of his Right, he went up towards my Lord, and, in a menacing and violent Manner, forces through a Crowd, and then, with his Whip lifted up ready to strike, cried out, *My Lord, you won't turn him off! Step aside with me.* Lord Anglesey, who knew the Man and his Business, which, considering all Circumstances, could be nothing but to quarrel, endeavours to avoid this Quarrel, declines going, and says to him, *Sir, you can have no Business with me; and if you have,*

this is no proper Place for me to dispute with you. Kercher says, *I have no Business but what you have, Sir, every Place is proper.* My Lord then inquires what he wanted, and is answered, *My Business is about your Coachman, who has assaulted a Gentleman in the Field.* My Lord asks, *Who is the Gentleman?* He is told the Gentleman is the very Person that stripping his Honour and Estate, and, that as the dispute has been publick, the dispute must be publick, and you may fire your sword, and turn him off directly, and drive your way home. My Lord, this Treatment, which will appear to have been attended with Circumstances sufficient to aggravate it, if it had been quite of another Nature, will appear to be the Occasion of the Quarrel; it will appear that Lord Anglesey declined this Combat, to which he was very unequal, as he was not armed, and to which he was not obliged to expose himself: He refuses, my Lord, to turn off his Servant; Mr. Mac-Kercher resents this; he raises his Whip in a threatening Manner, and loudly demands Satisfaction. I had almost forgot saying, that, during his whole Conversation, he held his Whip over the Earl's Head. These Circumstances and Menaces will appear, I apprehend, to be no less in Point of Law than that he first assaulted Lord Anglesey. Then it will appear that Mr. Francis Anglesey, the Friend and Relation of Lord Anglesey, who saw the Head of his Family, his Friend and Landlord thus assaulted, gives Mr. Mac-Kercher a Blow. It will appear, that, though Lord Anglesey did not strike Mr. Mac-Kercher, yet Mr. Mac-Kercher struck him and broke his Head. Mr. Anglesey stands justified for assaulting not only Mr. Mac-Kercher, but all the other Prosecutors: It will appear that he, upon the giving of this Blow, received two Blows, one from Mr. Gosly, and one from Mr. Kennedy, and both behind his Back. My Lord, Mr. Anglesey will appear to have been thus assaulted by those two Persons, and yet this is he that is indicted for assaulting Mr. Gosly and Mr. Kennedy. It will appear that Mr. Anglesey called out and desired to know who had struck him; and being informed who they were, then, and not till then, returned the Blows. With respect to Mr. Kennedy, it will appear that he is the Agent of Lord Anglesey, that he saw his Employer, we may call him his Master, struck and affronted; and that will be a proper Defence for him. As to the Assault upon Mr. James Anglesey, there is no Evidence of any such Assault. I shall give your Lordship no further Trouble at this Time. If I have omitted any Thing material, there are other Gentlemen joined with me in this Service, who will supply my want of Recollection.

Mr. Morgan. I believe this is our Time to have the Benefit of the Testimony of some of the Traversers in Favour of others of them. As to the Indictment for assaulting Mr. Mac-Kercher, Lord Anglesey, Mr. Francis Anglesey, Mr. James and Lady stand charged with that Indictment; and I beg Leave to appeal to your Lordship's Notes, whether there be any Colour (from the Evidence given on Behalf of the Crown) for this Indictment as against Mr. Anglesey and Mr. James; and therefore hope that they only will now be given in Charge to the Jury, and that the Jury may be directed to bring in their Verdict as to them, in order, that if they be acquit upon that Indictment, my Lord Anglesey may have the Benefit of their Testimony upon the same. When that is done, we shall beg Leave to proceed in like manner upon the several other Indictments, as to facts of the Gentlemen as we apprehend have not been affected by the Evidence given on Behalf of the Crown.

Court. Upon the whole Evidence, I take it, that the Assault upon Mr. Mac-Kercher stands already prov'd against Mr. Francis Anglesey only, by

by Mr. Mac-Kercher, Mr. Erving and Mr. Goslyn; the Assize upon Mr. Annesley hands proved against Lord Annesley and Mr. Erving, by Mr. Erving and Mr. Goslyn: As to the Assault upon Mr. Goslyn, the only Person that speaks to that is Mr. Goslyn himself, who says, Mr. Annesley struck him with his White Iron Nibbler after he had struck Mr. Annesley; so that upon this Indictment Mr. Annesley is not guilty to any Apprehensions, and may be admitted as Evidence to that.

Mr. Howard: I don't know, my Lord, what these Gentlemen would be at; I apprehend the Practice they would introduce is new and unwarranted. Here are in each of these Indictments my Lord Annesley, Mr. Erving, Mr. Francis Annesley, and the Out-ranbling Man indicted; there are four of them in each Indictment.

Court. It is my Opinion, the Gentlemen of Council for the Traversers may separate the Indictments.

Mr. Howard: My Lord, I do submit the Practice to be, that where it has appeared to the Court upon the Trial, that all the Persons who could give any Account of the Offence have been indicted, or Bills have been found against all the Persons present when the Offence was committed: If it appears upon the Trial that some of them Persons have not been guilty of the Offence, for which they were indicted, I cannot say, but it may be the Practice in such a Case to separate the Indictments, and permit such as shall be found not guilty to give Testimony for the rest, who happen to be indicted; and that may be reasonable from the Necessity of the Things; as there can be no other Evidence for the Traversers, there being no other Persons present at the Time of committing the Offence; otherwise the Consequence might be, that all would be found guilty where the Offence was privately committed, though, in fact, some of them were innocent. But where the Offence has been committed before Thousands, as here, and that four Persons only are indicted for this, and that after six Hours Examination it does appear most evidently, that each of these Four have had a Hand in the general Affray, tho' not in the Assault of every of the Prosecutors, I would submit it, if that be such a Case, as from the Necessity and Nature of it, where there can be no Want of other indifferent Witnesses presumed, the Court will permit that one of them should be at Liberty to give Evidence for the other. The Consequence of it may be, that they may acquit each other of the several Indictments, and they are not such equal and indifferent Witnesses as the Law requires, each of them being prov'd to have had some Hand in one Part or other of this general Affray, though not in the actual Assault of every of the Prosecutors, and the Evidence in the whole reaches every one of the Traversers. Can it be said, that those Gentlemen, against each of whom Evidence has been given, are so unbiass'd as to be the Persons to be examined as Evidence in the Case of each other? I humbly apprehend not; and that it may be an Inlet to Perjury, and in great measure defeat the End of all publick Prosecutions for Breach of the Peace. I beg leave to say, that Lord Annesley is guilty of the Assault upon each of the Prosecutors; It has been sworn that he cry'd out, Knock them down, knock them down. By those Words he is a Traverser against every Man that was knock'd down there. I apprehend the Law to be, that he who directs a Man to be knock'd down is a Principal, as well as the Man who commits the Fact. Has it not been sworn, that he not only encouraged, but also gave Directions to pursue Mr. Annesley? Why, then, as to Mr. Annesley of Ballygar, does it not appear evidently, that he was the Person who rush'd out upon Mr. Mac-Kercher and struck him, and that afterwards he fell upon Mr. Goslyn? I think there can be no Doubt but that any Lord Annesley and Mr. Erving have been most deeply concerned in this

whole Affray, not only of assaulting Mr. Mac-Kercher, but also of the rest. When my Lord was told by Mr. Mac-Kercher, *That he dare not say his Soul single himself out; Mr. Erving said, Sure, you would not do it, are there not enough of us here to go out and to fight him?*

Court. Upon three of these Indictments there has been no Evidence given that can affect Mr. Francis Annesley, and therefore he is at Liberty to be examined.

Mr. Howard: My Lord, I humbly apprehend that neither Mr. Annesley nor any of the Traversers have the Liberty to be examined till they are acquitted. I apprehend, though they may not be affected by Evidence on this or that particular Indictment, that they are not thereby cleared of this Charge; because the Gentlemen of the Jury are to consider upon the Circumstances and the Evidence of this whole Case, whether they are all guilty or not; and the Court are no Judges of Facts, the Jury must determine, and are the proper Judges of them.

Court. But you will allow the Judge to say, that there has been no Evidence of such or such a Kind given that can affect such or such a Person?

Mr. Howard: That I don't dispute, my Lord; but what I say is true in Point of Law, that the Court have nothing to do with the Determination of the Fact; that is to be left to the Jury; and if so, why then, I say, that in this Case, the Court can't foresee who shall be found guilty upon this or that Indictment, and who not.

Court. Why, don't I tell the Jury, that there is no Evidence against such or such a Person, and that they ought to be acquitted?

Mr. Howard: You certainly will, my Lord; but, notwithstanding that Direction, mayn't the Jury be of another Opinion concerning this Matter, and may they not conceive, that all those People in general have been guilty, though no Evidence appears against Mr. Annesley in particular? Unquestionably they may. Now, if it should be done, perhaps your Lordship won't fine them above a Penny, unless the Jury can satisfy the Court, that they went upon their own Knowledge from the whole Evidence, which, in all probability, some of them will in the present Case. So that they are the Judges of the Fact; and, if so, I would submit it, whether or no the Court can say, in a Case of that nature, We will let one of you be Evidence for another, and so the third for the fourth, and by that means shift and help one another quite out of this Prosecution.

Court. I am greatly surpris'd that the Time of the Court is taken up with contending about this Fact of separating the Indictments. You have debated it before, and it was mutually agreed, that that Point should be given to them. For my part, I think in Point of Law they have a Right to insist upon that, and when it was agreed upon that they should be allowed it, I thought that Method was come into in order to save Time. The Argument which is insisted upon, that where an Indictment is laid against a Person *Joint cum others*, they shall be all tried together, concludes against that which I have known done over and over again, and which hardly escapes ever being done in case of an Action of Assault against *A*, with *several cum other* People.

Mr. Attorney General. Here is an Indictment against Lord Annesley, Mr. Francis Annesley, and Mr. Erving, for an Assault, suppose, against Mr. Goslyn; has not any one of these three Persons a Right to say Mr. Erving is put here to cut me out of my Evidence? They certainly have. I desire that Mr. Erving may be first tried, and that his Indictment may be disposed of before any other Proceedings be had against the other two; that if he be acquitted, he may be Evidence for them. And as this would be the Law and the Consequence in the Case of a Traverser, so the Law would be the same in any other Case.

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Cf. Why, then, this is clear that the Agreement has passed in this Manner; the Gentlemen of Court all for the Traversers made their Objections to the Indictments being tried together, and those on the other Side reply'd. What was their Answer? It was, that where this or that Person was not convicted on any one Indictment, he should be at Liberty to give his Evidence for the others on that Indictment.

Mr. Mac-Manus. Here are four several Indictments against the Traversers in the Bar for four Assaults; and they are jointly charged in each Indictment. And where an Offence arises from a joint Act, which is in itself criminal, the Defendants may be indicted jointly and severally, so that they, and each of them, did so and so, or jointly only, So is the Law. Now, my Lord, consider, how it has appeared in Evidence; it has most fully and clearly appeared, that all Parties indicted have, one and all, jointly contributed to this unlawful Act; and please to consider the Objection these Gentlemen make, that if they are deprived of this Benefit, they may want the most proper and material Evidence for their Defence; as if some Persons might have been here indicted in order to take off their Testimony. Your Lordship will please to observe where this Action arose, at the *Carriage of Kildare*; a publick Place, where there were a Multitude of People assembled; so that there could be no Defect of Testimony at all on their Side, if any Persons did or could see or hear any thing for their Service; and Numbers of Persons did, and must have seen this whole Transaction; Curiosity, Humanity, or some other Motive, must have engaged every Eye and every Ear. Then, where there were so many Witnesses that might be had upon this Occasion, who would either voluntarily, or might have been compell'd to come, if material; there can be no Complaint of Want of Evidence; or that the Prosecutors have taken this Method to deprive them of their Testimony. And, my Lord, these Indictments were of the last Assizes, so there is no Surprize; the Gentlemen might have been fully prepared with any Evidence they thought necessary for their Defence, without this extraordinary, this new Method of splitting Indictments. And I do apprehend, in this Case they are in no sort entitled to the Testimony of each other. 'Tis a settled Point, that in Treasons, though one may act more violently, more injuriously than another; yet, when all join in an unlawful Act of this Nature, the Act of one is the Act of all. And though A did not strike B, yet if he struck C, where the whole is, as here, one continued Assault, he cannot possibly be a legal and competent Witness against the Crown, the whole is given in Charge to the Jury; he has been in the Affray and actually committed Acts of Violence; and it has appeared uncontroverted in Evidence, that every Person here indicted has been guilty of one Assault or another; and that all have been guilty of a publick and dangerous Disturbance of the Peace.

Court. It has not appeared upon the Evidence that Lord *Anglesy* or Mr. *Kent* actually assaulted Mr. *Mac-Kircher*.

Mr. *Mac-Manus*. My Lord, all the Acts of Violence of the Day proceeded from the Directions of Lord *Anglesy*; menacing Words, lifting up of Hands, his raising himself up on his Saddle, commanding and instigating others to strike; he himself, as Mr. *Kennedy* and *Archbold* swear, violently striking *Kennedy* on the Head, and *Kent* joining him in the Strokes till People cried out, *Shame*; and those opprobrious, abusive Language may not be an Assault, yet, there are many Things that they carried into Action, not only by Words, but by Gestures, that prove the Assault. My Lord *Anglesy* was so near Mr. *Mac-Kircher* at the Time when Mr. *Anglesy* struck him, that he could have struck him himself. Every Thing was done by his Directions;

and menacing Words, with a Blood-Blow, are an Assault in Law; and I do insist upon it, in Point of Law, that whoever excites, persuades, or procures another to commit a Treason or Treason, is a principal Offender, and equally guilty in Law, as he who strikes; and more especially so when all are present; and my Lord *Anglesy* and *Kent* were, indisputably present, aiding and assisting the assaulting of Mr. *Mac-Kircher*, and are in Law guilty of that Assault.

Mr. *Callaghan*. My Lord, as I do on the one hand perceive, that Traversers are not to be laid under extraordinary Hardships, and that Prosecutors by no means are to make use of any Contrivance, any Scheme to entrap Men, in order to deprive them of the Benefit of defending themselves; so, on the other hand, they are not to elude the Rules of Justice by becoming Evidence for each other. I put it upon the Gentlemen on the other Side to shew that ever they met in any Law-Book, that where there was a *Joint* done in the Presence of many, and a few *Jointly* charged with it, that, on the Trial of those few Persons, the Indictments should be separated, to make them Evidence, in case of their Acquittal, for one another. I am the holder in this Assertion, because it is never done, but where extraordinary Necessity requires it; that Necessity can never happen, but when all that were present at the Time the Offence was committed, are charged in the Indictment with the Commitment of it: The Necessity, therefore, of examining any of the People charged with the Offence, if acquitted, as Evidence for the rest, cannot be, but where there is Nobody else to give Evidence. In that Case it appears but just and reasonable; but, on the other hand, if you let those Four People be Evidence for one another, whereas many other Witnesses might be had, who must have seen the whole Transaction; there is no Prosecution of this Nature that will not be eluded. But, my Lord, I'll go further, and I do say that every Person charged here is guilty of every Indictment, with which he is charged. Wherever there is an Affray or an Assault, let who will be the first Promoter, every Man that does any Act whatever, that is aiding and assisting in any manner, is guilty of every Act which is done by the rest, as much as if done by himself; where there are several People that commit an Affray, each is answerable for the Act of the other. There is a Charge against Lord *Anglesy* in every Indictment, it stands prov'd in Evidence he has beat Mr. *Kennedy*; there, my Lord, is a direct Charge; and, though it does not appear he actually struck the rest, yet it is uncontroverted the rest were struck on his Account, and by his Directions, and in Law he is as guilty of the Assault committed on them, as if he himself had actually beat them; I say, in Point of Law he's guilty of all those Facts for which he is indicted. Let any one of them separately be tried before the Jury, and I'll undertake to make them guilty in Point of Law; and if so, I humbly submit it, whether they can be permitted to try these Indictments separately.

Court. Was it not agreed upon at first, that if any of the Traversers were acquitted of any of the Indictments, they should be Evidence for the rest charged with such Indictment?

Mr. *Harward*. Let us not be charg'd by the Court with a Breach of Consent. I'll tell you very candidly what I meant, when the Objection was made. My Meaning was, that as all these Indictments were but upon a single Fact, if it should appear, through the Course of the Evidence, that any of the Traversers had no hand at all in the Fact, but were idle Spectators there, I thought it reasonable that such Person, who did appear to be only a Spectator, should be examined as Evidence for the rest. That was my Meaning, my Lord, how I was understood I can't account; but I beg leave to rely upon it for Law, and desire your Lordship's Consideration. Can any Body that lifted his Hand

up the Day in the Field to innocent of this Assault? Can it be said that he is not guilty of all the Consequences of it?

Court. Well! But have they not a right to be tried separately?

Mr. Harward. That is another Point, my Lord.

Court. Gentlemen of Council for the Travellers, you must go upon that Indictment, which the Jury are first charg'd with. The Travellers are first charg'd with the Indictment for assaulting Mr. Gosfry.

Mr. Malone. The Indictment for assaulting Mr. Gosfry, is in no sort proved against the Travellers. We have many Witnesses to shew, that before ever he was struck, he knock'd Mr. Francis Annesley down, which indeed he very candidly admits himself; and this appears so clearly from his own Testimony, it would be mispending the Time of the Court for us to call our Witnesses to it. Your Lordship observes, that in two Minutes after Mr. Francis Annesley got up, and recover'd himself; Mr. Gosfry swears my Lord Annesley said to Mr. Francis Annesley, *That's he, that's Gosfry, the greatest Rascal alive, Damn him, knock him down.* Mr. Gosfry does not say, whether he heard Mr. Francis Annesley say my Lord, who had knock'd him down; but, from the nature of the Thing, it could not be otherwise; and the very Answer itself imports such a Question. A Gentleman is knock'd down behind his Back (for so the Evidence is) and instantly, when he gets up, was it not most natural for him to inquire who struck him? It was to this Inquiry, most plainly, that Lord Annesley gave that Answer, and then Mr. Francis Annesley goes up to Mr. Gosfry, and returns his Compliment by breaking his Head. I submit it, therefore, to your Lordship, Where a Witness fairly swears, he first knock'd me down, whether that is not such a sufficient Justification for my striking him, that I need not lay any other Matter before the Jury; for, if Mr. Francis Annesley, who gave the Blow, be not guilty of this Assault, it is impossible my Lord Annesley, or Mr. Lane, who did not strike, should be guilty of it. Therefore, I hope your Lordship will acquit the Jury, that there is no Colour for charging any of the Travellers with this Indictment.

Court. Mr. Gosfry said, that he was struck, and was all bloody; but I heard none say that Lord Annesley, or Mr. Lane, struck him, and Gosfry did acknowledge that about two Minutes before he received the Blow he had struck Mr. Francis Annesley, and at the time that he did strike him, did say, that he believ'd Mr. Francis Annesley did not know who it was that struck him, and that about two Minutes after my Lord Annesley said, *There is that Pillain Gosfry, that struck you;* upon which Mr. Francis Annesley struck him. This, as I remember, was Mr. Gosfry's Evidence.

Mr. Harward. I now desire to know when it was that Lord Annesley said, *Knock them down, knock them down.*

Mr. Callaghan. Mr. Gosfry expressly swears it was, by the Directions of Lord Annesley, that Mr. Francis Annesley struck him. He says, I thought the Quarrel was all over, there were above Two Minutes between the Strokes, and then my Lord Annesley said, *There is the Pillain Gosfry, knock him down.* Mr. Malone. It does not appear from Mr. Gosfry's Testimony, that my Lord said, *Knock him down;* the utmost Gosfry said, was, that my Lord said, *There's the Villain, that's he.*

Court. I have nothing upon my Paper about his saying any thing concerning the knocking them down.

Mr. Boyat. My Lord, I have it upon my Paper that Mr. Gosfry said, *There is Gosfry, as great a Villain as any in Ireland, knock him down.* Mr. Malone. We desire Mr. Gosfry may have leave to inform your Lordship what he did say.

Mr. Gosfry. My Lord said, *That's Gosfry, one of the Pillains, as great a Rascal as any in Ireland, Damn him, knock him down.*

Court. You see, Gentlemen, Mr. Francis Annesley was struck by Mr. Gosfry, on Evidence, two Minutes before he struck Mr. Gosfry, can he then be found guilty of an Assault on Mr. Gosfry?

Mr. Gortton. Mr. Gosfry said, that there was Hurry and Confusion, and that during that Time he struck Mr. Annesley, and believes Mr. Annesley did not see him strike him. I take the Liberty to say, that if Mr. Annesley did strike Mr. Gosfry, and did not see Mr. Gosfry strike him first, it was the same thing in the Intention of his Mind, as if he had not struck him first. For, since he did not know who had struck him, and yet struck Mr. Gosfry, it shews plainly he was determin'd to strike him, and nothing can justify Mr. Annesley for striking him, but the Provocation of his striking Mr. Annesley.

Mr. Callaghan. There is another Matter, my Lord, which is to be consider'd, that Mr. Annesley struck Mr. Gosfry after his Passion was over. It is true, there is no limited Time for determining a Man's Passion, and a Man may in Passion commit an Act, and not be the Assailant. Your Lordship may remember many Cases in the Books to this purpose, which it is not necessary to trouble you with; but the Rule is, where a Man has cool'd and come to temper, there the precedent Act, which was the Effect of Passion, is no justification of the subsequent Act. Mr. Gosfry's Evidence is, *I did apprehend all that Matter was over; I did apprehend the Stroke Mr. Annesley gave me was in Consequence of the Stroke he had receiv'd, but of Lord Annesley's Directions;* and if so, Mr. Annesley is undoubtedly guilty of the Assault on Mr. Gosfry.

Mr. Malone. As to the Indictment for the Assault on Mr. Gosfry, we contend for it, that there is no Colour for charging the Travellers with that Indictment, and hope your Lordship will let it go to the Jury upon the Evidence of Mr. Gosfry.

The Council for the Prosecutors were over-ruled in their Objections, and testimony was read.

The Jury go to find whether Lord Annesley, Mr. Francis Annesley, and Mr. Lane, are Guilty of the Assault on Mr. Gosfry, on the first Indictment, and, after a quarter of an Hour's Story, return into Court, and find

Lord Annesley — Guilty.
Mr. Francis Annesley — Not Guilty.
Mr. Lane — Not Guilty.

Court. Gentlemen of Council for the Travellers, call your Evidence. *Neile O' Neile is call'd to the Second Indictment for assaulting Hugh Kennedy, Esq;.*

Mr. Malone. There are three Gentlemen, my Lord, Lord Annesley, Mr. Annesley, and Mr. Lane, indicted for assaulting Mr. Kennedy; they have travers'd this Indictment, and Mr. Kennedy himself swears this Assault only on Lord Annesley.

Court. And upon Mr. Lane; and there is not only his Evidence to prove it, but the Evidence of Mr. Archbold.

Mr. Malone. But there is no sort of Evidence to affect Mr. Francis Annesley, and therefore, I hope your Lordship will direct the Jury to acquit him, that we may have the Benefit of his Testimony upon this Indictment.

Court. Have you any Objection, Gentlemen concern'd for the Crown? You have not offer'd a Word upon this Indictment.

Mr. Harward. What I have offer'd before, is all any Body can offer to this; and I believe it will soon be seen what the Consequence of it will be.

Court. I said upon your Motion, whether you had any Objection to the examining Mr. Francis Annesley on the Indictment for seducing Miss Kennedy, Esq.

Mr. Harwood. We have no Objection; we do object against examining him, and submit it to the Court.

Mr. Mac-Murdo. My Lord Annesley and Mr. Francis Annesley mutually assisted each other; it is all one and the same I repeat, all one and the same Affair, each is *Particeps Crimini*, and the whole Scene is interwoven, and mix'd together.

Mr. Mahon. There is not a single Word of Evidence given, to prove that Mr. Francis Annesley was concerned in the Assault upon Mr. Kennedy, and Mr. Kennedy himself swore to that Effect; therefore we believe that Mr. Annesley may be acquitted of that Indictment, and permitted to give his Evidence.

The Jury go to jail, whether Francis Annesley, Esq. is Guilty of the Assault on Hugh Kennedy, Esq. or not; and, without quitting the Bar, find him ——— *Not Guilty of the Assault in the Indictment.*

Mr. Mahon. We are now upon an Indictment of Lord Annesley and Mr. Lou, for seducing Mr. Kennedy, and desire Mr. Annesley may be sworn.

FRANCIS ANNESLEY, Esq.

Mr. Spring. Were you present upon the Carrage on the 16th of September?

A. I was.

Q. I ask you, was you upon the Carrage at the Time of the Race?

A. I was.

Q. Was you present when Mr. Mac-Kercher and his Company came up upon the Horse Course?

A. I never saw one of them before that Day in my Life.

Q. Did you see Mr. Kennedy come up to speak to Lord Annesley?

A. I don't remember that ever I saw his Face before that Day.

Q. Did you see any Body come to ask him about his Behaviour?

A. I did.

Q. Who?

A. Mr. Mac-Kercher.

Q. Do you remember any such Person upon the Course that Day, as Mr. Kennedy?

A. I was told after, that his Name was Kennedy, and I saw some Strokes between him and Lord Annesley.

Q. Can you say that the Person you saw there was the same with him you now see here?

A. I don't remember his Face at all, but was told it was he.

Q. Can you take upon you to say you saw him that Day?

A. I did not see him that Day that I know of.

Q. What colour'd Cloaths had the Person on, you saw engag'd with Lord Annesley?

A. It was Scarlet.

Q. And did not you see his Face?

A. I saw his Face, but I don't know it again.

Q. In what Situation was you when he struck you?

A. I had my Back to him.

Q. How do you know then, that he struck you?

A. I apprehend, though my Back was to him, it was he, and upon his striking me, my Lord struck him.

Q. Did you see him strike my Lord?

A. I did.

Q. Which of them gave the first Stroke?

A. The first Stroke that was given was by my Lord to Mr. Kennedy, some Minutes after I had got a Stroke upon my Head.

Q. Was Mr. Mac-Kercher and Mr. Goggin?

A. They were.

Q. Was Mr. Lou near Mr. Kennedy?

A. I believe Mr. Lou was pretty near, but not within Reach of him.

Q. Did you see Mr. Lou or he give any Stroke to each other?

A. I did not.

Q. Do you think Mr. Lou could have struck him without your seeing him?

A. I don't think he could.

NELSON O'NEILL.

Mr. Morgan. Pray, Sir, do you know the Lou at Newbridge?

A. I do.

Q. Where was you on the 17th of September in the Night?

A. In the Afternoon I went there, I was at Lord Bisham's, and Mr. Mac-Kercher, Mr. Kennedy, and Mr. Livingston to the best of my Knowledge, sent a Messenger to my House to speak with me.

Court. Who told you they sent to speak to you?

A. My Wife, when I came Home.

Q. Did you go to them?

A. I went to Newbridge.

Q. What Day was this?

A. It was the 17th I went to the Race.

Q. You went to them?

A. I did.

Q. Name them again.

A. Mr. Mac-Kercher, Mr. Kennedy, Mr. Livingston, and Mr. Goggin.

Mr. Morgan. Where did you go to the 17th?

A. To Newbridge.

Q. When you came there, who did you meet, and what pass'd?

A. On the 17th, the Gentlemen never were upon the Seat before; and they went all together to the Carrage.

Court. Upon the 17th?

A. Whatever Day the Race was, it was that Day, ——— on *Wednesday*, ——— as to the Day, I can't be positive, I did not observe the Day of the Month.

Q. It was the 17th. There was never a Horse to start but one. They said, they never were upon the Ground but at that Time, and upon going to the Carrage, there was no Diversions, and we came back, and Mr. Mac-Kercher said, he saw Lord Annesley, *See what a Look*, says he, *he grew at us all that Day, but, says he, I want nothing but to expose him to the People, and I'll make it my Business to do it before I go back to Dublin.*

Q. Who was the Company? Name them.

A. There was Mr. Mac-Kercher, Mr. Kennedy, Mr. Livingston, and Mr. Goggin present, and I don't know but Mr. Robinson was there.

Q. Can you be positive who was there?

A. I know Mr. Mac-Kercher, Mr. Kennedy, Mr. Livingston, Mr. Goggin, and Mr. Annesley were there.

Mr. Harwood. My Lord, I desire the Court may take Notice he swears positively that Mr. Livingston was one of the Company, and we can prove him to be in England at that Time.

Mr. Morgan. In England! I can bring People to prove, that saw him in *Near* the next Day after the Races.

Mr. Spring. Was you upon the Carrage the 16th?

A. I was.

Q. Was you there when Mr. Kennedy was there?

A. I saw him there.

Q. What Part of the Carrage did you first see him on?

A. I went along with him to the Carrage, for we dined at Newbridge that Day.

Mr.

Mr. Attorney General.] If you can prove, Gentlemen, that Mr. Longlee was not there, what need you ask this Man another Question?

Mr. Mather.] My Lord, we will produce the top Men of the County to his Character.

Mr. Spring.] Was you by with Mr. Kennedy when he met my Lord Angley?

A. I was by with him most part of the Day.

Q. Then give an Account of what happened when they first met?

A. I can't tell whether I was present at their first Meeting; but when they met, they never spoke a Word to one another, but at the Time of the Action.

Q. What Action, was there a Quarrel?

A. There was a Quarrel, and Mr. Mc Kercher was the beginner of it. So there happened some Words that the Coachman had said to Mr. Angley, and upon the same, Mr. Mc Kercher was very angry, and said, that the Thing was intended on purpose.

Court.] To whom?

A. To Mr. Kennedy and the Gentlemen in the Crowd with him, and I was there at the same time.

Q. What Words were they?

A. The Words *Shut thy*, or some such Thing. And upon that, he said, *He would make application to my Lord, and if he did not discharge the servant, he would have Satisfaction for it.* Upon which, my Lord happened to be down where there was a Dispute about Sir Edward O'Brien's Mare running on the wrong Side of the Post; and we rode around until they came to the Winning Post, where my Lord was. Upon which, Mr. Mc Kercher told him, that his servant, who had been ill, and hoped for Satisfaction from him, and that he would turn him off. My Lord said, *He would not.* And upon that, Mr. Mc Kercher said, *He did not use him well, and would have Satisfaction.* And he had the Whip up in his Hand in order to strike, and he rode a Stone-horse and he was vicious, and I don't know whether the Stroke was intended for my Lord or for the Horse.

Mr. Spring.] Did you see Lord Angley and Mr. Kennedy together that Day?

A. I saw them close together.

Q. Did any thing happen between them?

A. I saw them strike one another.

Q. Who?

A. Mr. Matherley and Mr. Kennedy.

Q. Give an Account of that.

A. When Mr. Geoffrey struck Mr. Francis Annesley, he was for about two Minutes before he found out who it was. Upon which, he asked who it was; and my Lord said, *That is the Man, that Geoffrey, pointing to him.* Upon which he went over, and made a Stroke at Mr. Geoffrey, and there were some Strokes that passed; and upon that, Mr. Kennedy came and made a Stroke at Mr. Francis Matherley, and hit my Lord over the Wig, but whether it hurt him or no I can't tell, or whether the Stroke was intended for him or not I can't tell.

Court.] Did you see the Stroke reach my Lord?

A. I did see it reach him upon the Wig.

Q. Did you see my Lord strike Mr. Kennedy?

A. I did. As soon as he received that Stroke, he up with his Whip and struck him.

Mr. Spring.] Did you see Mr. Lans there?

A. I did.

Q. Where was he at the Time of this Quarrel?

A. He was in the Crowd.

Q. Did you see any Engagement between Mr. Kennedy and Lans?

A. I did.

Q. Who struck first?

A. That I can't swear to at all, which of them

struck first; for the Crowd pushing back ward and forward, I could not be distinct.

Q. Was the Blow given by Mr. Kennedy to Lord Angley, before Mr. Lans and Kennedy were engaged?

A. It was before I saw them engaged.

Q. Which struck first, Lans or Kennedy?

A. By Virtue of my Oath I can't tell which; I saw Blood run down Mr. Kennedy, and whether it was he struck Mr. Lans first or no, I can't tell; for when I saw my Lord receive the Stroke, I was turned about my Horse, and did not mind. I was just crossing between him and my Lord, and when Mr. Kennedy struck at Lans first I can't tell.

Q. But you said you saw Mr. Kennedy strike Lord Angley before you saw Lord Angley give a Stroke?

A. I did, Sir.

Q. What happened between Mr. Kennedy and Mr. Lans?

A. I can't tell.

Court.] Gentlemen concerned for the Crown, will you ask this Man any Questions?

Mr. Howard.] We will not ask him any Questions, but beg for Justice like he may not be permitted to get out of the Court, till we proceed to give Evidence against him for Perjury.

Court.] How long have you been acquainted with Mr. Mc Kercher?

A. I believe since his first coming into the Kingdom.

Q. And with Mr. Kennedy?

A. Yes.

Q. And with Mr. Geoffrey?

A. No, nor with him.

Q. How came you to go with them to the City?

A. I had an Intimacy with Mr. Matherley, (for he was some time at my Father's House when a Child) on his first coming into the Kingdom, and they sent for me.

Q. On what Business did they send for you?

A. I can't tell, my Lord.

Q. Who went to the Curragh with you?

A. We went all together to the Races, and we had Discourse as we went along.

Mr. Mc Manus.] Whom did they send for you?

A. Several.

Q. Who were they?

A. Their own Servants.

D. Name the Servants.

A. One Barry Mather, and several of them.

Mr. Digby, Foreman of the Jury.] Did you meet me coming home on the Road that Day?

A. Yes, Sir, I believe I did, I can't recollect.

Q. Did you say any thing to me?

A. I can't say I did.

Q. Did not you express Concern to me at the Treatment Mr. Mc Kercher and Mr. Matherley had received?

A. I don't remember that I did.

Q. Did not you express yourself, that you thought they were used very hard?

A. I don't know but I might tell you so.

Mr. Howard.] I desire, my Lord, that Mr. Livingston may be called, to satisfy you he was in England last September.

Court.] You had better stay a little.

[Patrick Cavenagh is called, and goes away again, being to be examined to another Point.]

Mr. Callaghan.] We'll beg Leave to produce Mr. Livingston, to shew your Lordship where he was in September last.

WILLIAM LIVINGSTONE, Esq;

Mr. Callaghan.] Where was you in September last?

A. In London.

1

Q. Was you my Part of that Month in the Year?

A. I was not.

Q. When did you come over to Ireland?

A. It was the middle of October before I came to this Kingdom.

[Mr. Malone *informs the Court* that in October he saw Mr. Livingston at Falkgate ready to embark for Ireland.]

CROSS EXAMINATION.

Mr. Spring.] Do you know this Mr. Neile?

A. Yes, Sir.

Q. Did you ever see him in Mr. Mc Kercher's or Mr. Kennedy's Company?

A. I have.

Q. Were they not well acquainted?

A. Yes, I believe they were.

Q. Was he employ'd by Mr. Mc Kercher or Mr. Kennedy?

A. Sir, when we came first into Ireland about two Years ago, Neile met us uncall'd for at Kill; he told us a great deal of his Knowledge of Mr. Amusey at Kinn, and the Witnesses that knew his Affairs; and often came about us upon that Errand, till at last he came so often, that he was used with the utmost disregard; and when we found out his Character, he was never suffered to come about the House at all.

Mr. Digby.] What Character has he? Do you think he is an honest Man?

A. We were Strangers in this Country, he look'd like an honest Man to us at first, but upon a better Information we found him quite the Reverse.

Mr. Mc Manus.] My Lord, we desire my Lord Allen may be sworn, to give a Character of this Man.

The Right Honourable Lord Viscount ALLEN.

Mr. Mc Manus.] Pray, my Lord, do you know this Neile O Neile?

A. I know him very well, and believe no Man bears a more infamous Character in the County of Kildare.

Q. Does your Lordship think he deserves any Credit?

A. I am confident he does not; he's a very great Villain; I would not credit him nor believe one Word he says. I know that no Gentleman would admit you into his Company at the Time you were employ'd by me, and my Uncle and I had often many Words because I employ'd you, and we found you out to be the greatest Rogue that could be.

Court.] Do you think he is a Man to be credited upon Oath?

A. No, my Lord, he is not.

Mr. Mc Manus.] We beg leave to produce the Minister of the Parish where he lives.

The Reverend Mr. JOHN DAWSON.

Mr. Mc Manus.] Do you know Neile O Neile?

A. I know him ever since I came into the Parish of Naas.

Q. How long is that, Sir?

A. I have been two Years there.

Q. What Character has he generally bore during that Time?

A. I have always heard he was a Person guilty of as many Frauds as he was capable of committing; I can't account for his Mords, but he is a Person that was always very litigious.

Q. Do you believe him a Person to be credited upon his Oath?

A. Why, I protest, I have known him guilty

of Numbers of Lyes and Falshoods, and is a Person, I think, not to be credited.

Q. What is his general Character?

A. The general Character is, that he is a Person not only litigious, but capable of any Cheat imaginable.

Q. If he, or is he not to be believed upon his Oath?

A. I should give little Credit to his Oath, because I have heard his Word so often forfeited.

Lord Viscount ALLEN.] He's the greatest Rogue alive; 'tis nine Years since he robb'd me, I have had Warrants out against him, and could never catch him, but will now send him to Gaol before I leave this Town.

Mr. Malone.] We desire Maurice Keating, Esq. may be called to the Character of O Neile.

[Mr. Keating is called, but does not come into Court.]

Mr. Spring to Mr. Dawson.] Was not this Neile an Agent to Mr. Mc Kercher and Mr. Amusey?

A. He had the Repute in Naas some time ago of being a strenuous Friend of theirs; but I never saw him about them, I had no Occasion to interfere in their Affairs.

Court.] Gentlemen of the Jury, the Lord Amusey and Mr. lens stand indicted for an Assault on Mr. Kennedy. I shall only tell you, Gentlemen, that I find, on the Recollection of the Evidence, it stands fully proved by Mr. Kennedy and by Mr. Archbold, that both his Lordship and Mr. lens, without Provocation, without any Attempt in Mr. Kennedy to strike a Blow, did strike and sorely beat this Gentleman. Thus it stands prov'd upon their Testimony; and, Gentlemen, the only Evidence offered to take off this Charge was first Mr. Francis Amusey; and I do think you may say what he says intirely out of the Case, for he tells you he never saw Mr. Kennedy before this Day, and did see Lord Anglesey and a Gentleman in Red engaged that Day on the Curragh; but who that Gentleman was, he cannot tell, and knows not whether it was Mr. Kennedy or not, but that he saw several Blows pass between them. And Mr. Amusey, with great Candour and Integrity said, that if it was proved that Mr. Kennedy and that Gentleman were the same, he saw him give no Provocation; so that it still remains clear and undoubted upon the Testimony of Mr. Amusey, that my Lord Anglesey and Mr. lens are both guilty of the Assault upon Mr. Kennedy; for he tells you farther, that the first Stroke that was given between them was by my Lord. Why then, the only other Evidence produced was a Person of extremely different Character from Mr. Amusey, one Neile O Neile, a Surgeon from Naas; and what does he say? He tells you that he was at the Inn of Newbridge with those Gentlemen; that he was sent for by them to Naas, and being from home, was told, when he returned, they had sent for him, and that there he went and found Mr. Mc Kercher, Mr. Kennedy, Mr. Goggin, and twice I am positive, I think three times, swore that he saw Mr. Livingston there too. That with these Gentlemen he went to the Curragh; that in the way Mr. Mc Kercher told him, He wanted of all things in the World to expose the Lord Anglesey to the Populace, and was determined to do it before he returned to Dublin; that for that purpose he began the Quarrel: but says, he did not see Mr. Mc Kercher strike my Lord, nor attempt to strike him: That he was upon a vicious Stone-Horse, and whether he lifted up his Whip to correct his Horse, or for what other purpose, he cannot tell. He tells you further, that he saw Mr. Kennedy strike my Lord, but knows not whether he intended to strike him or not: and says, he believes the Stroke did not hurt my Lord. That upon this, my Lord struck him; but if you believe him,

the first Man hit upon my Lord. Now then, this Man having sworn, that Mr. Kerker was one of this Company, and being alleged that he was then in England, Mr. Kerker was sworn to account whether he was or no. He declared upon his Oath he was not in England at that time; but in London, and came over to this Kingdom in October; and says, he knew that this Man was acquainted with Mr. Mc Kerker and Mr. Kennedy, and employed by them; but that he met them on the Road uncall'd for, frequently attended them under pretence of serving them, until at length he became so troublesome, they were obliged to dismiss him, and forbid him to come near them. Then, in the next place, it is offered to discredit him further, the Council for the Prosecutors called my Lord, who so gives a Character of him; and his Lordship tells you, that he is of a most infamous Character, of such a one, that his Lordship swears positively he is not to be credited on his Oath. The same bad Character is given him by Mr. Dwyer, the Minister of the Place where he lives.

You see, Gentlemen, there is nothing in the World offered but the Evidence of this Man to take off the Weight of Mr. Kennedy and Mr. Archbold; and you will consider what Credit he deserves.

The Jury go to find whether Lord Anglesey and Mr. Lani are guilty of the Assault upon Hugh Kennedy, Esq; or not; and find, *Not Guilty*.

Lord Anglesey—Guilty.

The Indictment for the Assault on DANIEL McC KERKER, Esq;

Mr. Malins.] This, in reality, is the main Indictment, upon which all the rest have been grounded. It does not appear by any Evidence, that my Lord Anglesey and Mr. Lani had any hand in assaulting him; and therefore we hope, upon the Rule you have laid down, to be allowed the Benefit of their Testimony. Mr. Mc Kerker himself, in his Evidence upon this Indictment, does not pretend that either Lord Anglesey or Mr. Lani did assault him on the Carriage. If I mistake your Evidence, you'll see me right.

Mr. Mc Kerker.] What do you understand, Sir, by assaulting me?

Mr. Malins.] I mean a Blow.

Mr. Mc Kerker.] I can't say they gave me any Blow.

Court.] The Account Mr. Mc Kerker gave was, that after a good deal of opprobrious Language, he told my Lord Anglesey, *He had, and dared not for the Soul of him single himself out, and tell him so.* That upon those Words, Mr. Francis Anglesey step'd forward, and struck Mr. Mc Kerker upon the Forehead, which occasioned a Swelling and a Bleeding; and I don't recollect that Mr. Mc Kerker gave any thing in Evidence that my Lord said or did to him more than this.

Mr. Malins.] As there does not appear any Evidence that can affect Lord Anglesey and Mr. Lani on this Indictment, we beg leave to desire your Lordship will give the Jury some Directions concerning them before we proceed further.

Mr. Harward.] I believe there can be very little doubt, when you consider, but that Mr. Lani is guilty of the Assault upon Mr. Mc Kerker; and I'll tell your Lordship the Reason why I apprehend it so; because there is no Controversy but that this Man, upon the Words which pass'd between Lord Anglesey and Mr. Mc Kerker, rush'd out and said, *Sure, my Lord, you would not offer to fight this Fellow, while there are so many here by to fight him for you.* What follows upon this? Why then, one of this very Company goes out and strikes him.

But, my Lord, we say they all guilty of the Treason committed against him? I do say they are all Principals; and that there is no distinguishing in Law between the Man that struck, and the Man that assist by Word or Act.

Mr. Mc Malins.] I apprehend the Question to be, whether my Lord Anglesey and Mr. Lani assaulted a particular Person whom they incited others to strike; and whom their Rage and Passion would have inclin'd them to strike, if they could as forcibly have struck him as they did others. Persons never to them of the same Party. In Constitution of Law it is an Assault; they both did assault Mr. Mc Kerker, and that clearly appears from the Evidence.

Court.] The Evidence of Mr. Mc Kerker was, that upon my Lord's calling him *Thief, Scoundrel, and Villain*, Mr. Mc Kerker said, *You dared not for your Soul single your self out, and tell me so.* Upon which, some that were by, said, *My Lord, you go fight such a Scoundrel! here are enough to go out with him.* What ensued upon this? Why then Mr. Mc Kerker tells you, that upon further Words between them, he said, *My Lord, you be; and that immediately upon his saying so, not a Word said by any other Person; Mr. Francis Anglesey step'd forward, and struck him a Blow on the Forehead.*

Mr. Bage.] If I apprehend his Testimony aright, Mr. Mc Kerker said the Words, *You be; we are antecedent to the other Words.* And the rate Notes, and they'll take care to do what is right.

PATRICK CAVENAGH, *Dominic-Master.*

Mr. Morgan.] Do you recollect where you were the 16th of September last?

A. I do.

Q. Where was you?

A. I was at the Carriage at the time of the Race.

Q. Did you see Lord Anglesey there?

A. I did.

Q. Did you see Mr. Lani there?

A. I did.

Q. Did you see Mr. Mc Kerker there?

A. I saw him there.

Q. Give an Account to the Court and the Jury, what you recollect to have pass'd, touching Mr. Mc Kerker's coming up to Lord Anglesey?

A. I heard some little Thing when I was at Kilkullen-Bridge before the Race, of some Design, and it made me a little more particular. My Lord Anglesey was going down to the Winning-Post when the Dispute was about the Running of the Horses, and I parted from there; and as I was going, I saw these Gentlemen, Mr. Anglesey, Mr. Mc Kerker, Gosley, and Kennedy, going towards Lord Anglesey. When I saw that, I immediately recollected what I had heard at the Bridge, that there would be a Quarrel; upon which I returned immediately again, and when I came up, I found there was a Crowd about them, and they were engaged in Words; and I just came up at the time when my Lord Anglesey said, *Sir, I would not suffer my Servants to offend any one, let alone a Gentleman.* I just came in upon that Answer, and I don't know what pass'd before at all.

Q. What did Mr. Mc Kerker reply to that?

A. I could not hear well what he said, for he spoke very low; but Lord Anglesey spoke very loud.

Q. Was Mr. Mc Kerker near Lord Anglesey?

A. He was close to my Lord, the Horses Heads were just together; and then I heard Mr. Mc Kerker some little time after say, *My Lord, your Servant has assaulted a Gentleman.* And my Lord answered, *What Gentleman?* And Mr. Mc Kerker answered

And the other, that as long as Congress is not out of the picture, the bill brings limitations that will not be all right and as well before the Senate. The bill will not be all right and as well before the Senate. The bill will not be all right and as well before the Senate.

[illegible]

And Mr. John Knapp lifted up his arms, and said, "Gentlemen, this is a novel to our country, Mr. Foster's singing, or Mr. Zerk's, not any Lord at this time?"

And I am very glad to hear of you, Mr. Taylor, they stood close together, and my Lord a little on one side speaking to Mrs. B. Archer. But soon and they were all sent out to the garden. What was it my Lord said to Mrs. B. Archer? I am not sure I should like to tell you.

Q. What ensued upon that? A. It answered about
2. Mr. McEwen inflicted upon it, and held
up the But-End of the Whip at my Lord's upon
which Mr. Langley gave him a Blow before he
could say a Word, if he intended it.

could give my Lord a smart. End of it in his Hand
 2. Did he positively set up the Bug-Earth or
 his Whip, *thou shalt find a dozen and an odd* *judge*
 7. He curst up the Bad-End of this Whip
 Sir, you would not call your self a T. *judge*
 2. How did he hold his Whip when he spoke
 to my Lord?

A. He had the proper time of day, and was
 first; but upon my Lord's refusing to return this
 Coachman off, he turn'd his Whip, and said, *You*
would save him off; my Lord's of a different mind.
Q. What kind of a Whip was it that *Wells* *Mr*
Kerker had?

A. I can't be particular, no. I can't be particular.
Q. I smile a long one a short Whip?
A. It was a long Whip; it either had a Tail, or was one of the Whips with a prodigious long End to it.
Mr. Howard, I was it not a short Jockey-Whip?

Q. Had it a Lath to it? *crack and whirr* A. I don't believe it had a Lath, but he took it about the middle, or thereabouts, in his hand.

Q. Did he hold it in a threatening manner?

A. He did, and said in Anger, *You won't turn*

him off, my Lord?—
 1. Mr. Morgan, I was there, or was there not be-
 fore that time in which he cut'd his Whip, any
 Stroke given, by virtue of your Oath? *Yes and*
no. There was none given before that Time by
 virtue of my Oath.

2. Did you see him do any thing?
A. I did not.
3. Did you see him do any thing?
A. I did not.
4. Did you see him do any thing?
A. I did not.
5. Did you see him do any thing?
A. I did not.
6. Did you see him do any thing?
A. I did not.
7. Did you see him do any thing?
A. I did not.
8. Did you see him do any thing?
A. I did not.
9. Did you see him do any thing?
A. I did not.
10. Did you see him do any thing?
A. I did not.

and asked him, *David be ast any one else there for be was not worth my Lord's while.*

Mr. Digby: I think you said, some Conversation had passed at Kilkenny Bridge, about a Design to quarrel?

Q. When was it you heard so?
A. It was the Morning, the 16th, before I went
to the *Carriage*.
Q. Who was it told you so?

7. I heard that a Gentleman came from *London* and told Mrs. *Jans* there would be a *Quarrel*, and

[illegible][illegible][illegible][illegible]

Mr. Digby: Explain your self what you mean had said when Mr. Pitt Esq. had challenge'd my Lord? (Cries out, till he might say no more.)

himself. And my Lord said, *He would go with him*. Upon which, *Mr. Humphrey* and *Mr. Lams* said, *My Lords best*. And so calling our wives, *Mr. Lams* said, *You said Mr. Lams told you, he was inform'd of a Quarrel that would happen; I ask you, whether he told you the Gentleman that inform'd him gave him any Reasons why he apprehended there*

A. Mr. Jones told me, he was informed there would be a Quarrel; that a Gentleman from Dublin told him there would be a Quarrel, and told me no more.

—Mr. Hayward takes a Gentleman's Whip in his Hand, and says, A Thousand Whip is where there is a Thousand, this is a Fox-Hunter; a *Wing* (c.) I understand it to be fetch a Whip as they can't tell what you call it.

Mr. Harward.] This is a Fox-Hunter, now, Sir, will you take this W^{ch} hip, and show us how Mr. Mc Kercher exercised his W^{ch} hip, a little and a little.

A. Sir, this is the W^{ch} he had it when I saw him first, [holding the Handle in his Hand,] and while I saw him talking with my Lord, he took

Q. Tell what People were next to you at elms
Time for the first trial.

2. Now, I think you said, when Lord *Anglesy* was challenged, you understood it was a Challenge to fight.

A. I think you have also said, that Lord Angles-
-ey upon that said, he would go out and fight Mr.
McKeeber?

A. He said he would go with him, but I do not
think he would have gone.

Q. Are you sure he said he would go out and fight them?

A. I am sure he said so.

Q. What was it my Lord said?

A. Mr. *Mc Kercher* asked him the Question twice or thrice; upon which my Lord said, *Well,*

I will. And the others said, *He fealtly not.*

Q. Did you Mr. McQuinn all appear to be in a challenging manner? (Puffing in a breath) A. It was not intentional, as we well see.

Q. When Jack says, "All he would go do with him, did you say, is that he would go and fight with him?" A. That's all. "I'm not sure." How do I know, say, whether he would or

Q. What did you expect to find my Lord meant? A. I expected to find blood and oil. That you gave blood and oil to the world.

Q. What did you apprehend my Lord intended to do upon his flying them words?

A. I did not believe my Lord would go out to

Q You apprehended Mr. J. M. Keady, intent that my Lord should go to fight? said one word.

A. No, perhaps not; it might be otherwise; he did not come to that life, therefore I can't

Q. Had my Lord any Arms? I answer'd, Yes I
did. He had none; and you rest - "conclude," will
A. Are you certain that Mr. M. wrote the

You: "If you challenge me, how do I know whether you'll fight me or no?"

Q. Now you believe that the Lord had some sinners in Yel stadt; have fought, if my Lord had some sinners in Yel stadt?

rather than giving us who give the challenge, means
to fight for you and against you. I don't want to
fight for you and against you. I want to fight for
you. I do believe you are right. I believe you are
right. Don't you believe the Man that accepts the
challenge?

Challenge: doesn't set you back and you're not afraid of it? **Smith:** No. It is probable he does, but I don't believe any Lord intended to fight a military action of that kind. What kind of a Whip had Mr. McKeibin?

in his Hand?

test 1. It was a long Whip, a hunting Whip, a
Q. Was it more a Jockey Whip than Mr. Mc
Hester had the Day and Evening Volume 1

Q. A. It appeared to have a Tail twice as long as the body, and the wings at the same Time held out a bunting Wip with a long Lash to it, as to

1741. I might possibly some time or other in my Life have had such a Whip in my Hand, but I never made Use of such a Whip; I had a very

small Whip, one of the smallest Size, that Day,

Mr. Spring.] Do you know Mr. Love's children?

15th or 16th of September, concerning any Querry that you had heard there was likely to be. Has
you any Conversation with him?

4. On Monday before the Rates, I can't recall the Day of the Month now, but I could if I were a better hand at dates. I forget. T. 1816-1817

Q. What do you mean by a regular Table? I mean of my Buſineſs.

A. That of a *Druggist* and a *Dyer*.
D. Well, go on.
A. Mr. *Usher of Bassoon* and *Percell* the Butcher
as he told me he was, the Man that keeps the young

Early some time, they were in my shop; and, perceiving to be backwards when they came in, and when I saw them, I came out to know what business they had, and I first spake to *Purcell*, and after

what he wanted. He told me they were come there
and wait for the young lady. I went backwards on
that and came into the Shop again, and in a little

and spoke to my Man over the Counter. I did not hear what he said, and my Man said a Room over the Way, and they went there together and stayed

For ten days; and while he was away, says
"I thank the young Lady Mary D—d, for Purcell,
but a wicked, wicked fellow, that would whip
the old Lady; he had hold of him. Yes, Mrs. D—d

2. What Day was this? and I was distressed.

Q. Tell what you did relate to Mr. *Mass*?

A. I told him, that my Servant had told me, that *Upham* had told him, where were ten Men buried

hand gone to the *Courage*, he said. Then, however, he went to *Probs*, Mr. Mc Keeber and this *Company* did not get out till Wednesday. Then, he said, he is in *Calcutta* to Mr. Mc Keeber. Do you hear what

the man I really, *was* you ever in his shop? And
 12 A. I do not know whether I was. Now I am
 13 not; nothing of such kind. And just of bad
 14 kind of a Cross-Examination, and that

Mr. McManus.] Do you know young Mr. McManus? *Confidentially* Yes, I do. I know him well. I believe I should know him, half an agent.

Q Was you ever in England, Sir? m^d 74. 107
-86. s. 8
A I was; but abed; it m^ds v^d 17. 39.
qin 1.

Q. Was you a Witness there ?

A. I'll answer you, I was to be a Witness to the Execution of one *Paul Kaituma* I said I

Q. Do you know Mr. Giffard? A. I do. Mr. *Law* brought me to him, and desired me to tell Mr. Giffard what I knew of Paul.

[Hereupon this Warrant was turned off, the Table by the Treasurers deep Council. August 20, 1741.]

Mr. LALOR'S Colloquies are now to be continued. The
 third and fourth *this* *Debate*, left out: *WATSON* IN THE
 COURT OF THE LORDS. *WATSON* IN THE COURT OF THE LORDS.
 The Jury go to try whether Lord *Anglo* and Lord *Anglo* are

Mr. Law are guilty of the crime. — Guilty, and sentenced to death. —

MR. SPRING. My Lord, I don't know whether it will be necessary to trouble your Lordship with any further Evidence; for my Part, I am easily'd to

fer upon the Evidence of the Crown, and trouble your Lordship and the Jury with any thing further upon that Evidence; but my Duty calls upon me to do every thing I can for my Clients, and

therefore with respect to Mr. Amey, I would say a bold thing. The jury will consider who was the first aggressor in this assault, and will find it was Mr. McCreedy. I do insist, apocryph in Poin-

of Law, that the lifting up an Hand in the manner
Mr. *McKee* did, as appears even from his own
Confession, is in Point of Law an Affidavit; it ap-
pears, and the Jury can't forget, that the Gentle

went into the field arm'd and prepar'd to fight. As they went to the Horse-Race at New-Battle, where they were to see the Duke of Devonshire's horse race, he was met by many servants, attendants &c. by six or seven hundred men, in such an extraordinary manner, as cannot be

satisfied by Law, because going around to places where all other People generally go unsatisfied, is it not? Mr. Mc Keefer and his Company, who

as they presently had been infatigued by my Lord of the 14th, repair to the same Place again and in this manner, which plainly shews what their In-

not say, and that it was neither that in being on a Quirel with my Lord Angley. It appears from the Evidence, that upon some Indignity offered by a Coachman to Mr. Kerker, Mr. Kerker did not go to call Lord Angley to an Account, and demand public Satisfaction, and it appears that he was contented not to go far far of bringing on a Quirel, and that not understanding, he went and forced them the Coach to get a my Lord; so that it appears, instead of declining a Contest, as he would willingly make you believe he did, he brought it up himself, he went to call upon Lord Angley for an Offence not done by himself, he called him out to fight him, and my Lord declines doing so by telling him, This is no Time nor Place, you see I have no Pistol. Mr. Kerker answered, Your Servant has offered a Gentleman, Mr. Annesley, and as it was judged, it is supposed that you brought him down off; And so my Lord, in saying Mr. Kerker, must take upon him to drive his own Person home in this Coach. This Treatment of a Nobleman, must call for such a Degree of Resentment, as must of Necessity have ended in a Quirel, it tends plainly to a Breach of the Peace, and I would know what Right Mr. Kerker had to resent an Affront done to another, and demand Satisfaction in such a manner, as no Gentleman would have complied with. What Right had he to prescribe the method of rectifying this Satisfaction? That very Circumstance plainly shews he had an Intent to quarrel, and his Manner of demanding Satisfaction, amounts to a Challenge. Why then, if, besides this, your Lordship and the Jury will please to consider, who the Person affronted is, and for whom this public Satisfaction is demanded, that my Lord Angley looked upon him as his Brother's *Best Friend*, by a *Kitchen-Maid*, and knew, he was claiming his Estate and Title; I hope you will think my Lord's Behaviour was no more than could reasonably be expected from him, under such Circumstances. But this is not all, Mr. Kerker gives my Lord, the Lye, desires him to withdraw with him, and in Case of his Refusal, threatens him with a lifted up Hand. Mr. Kerker positively swears, to his lifting his Hand with the Butt-End of his Whip towards my Lord, and threatening him at the same time; and Mr. Kerker in his Evidence does not deny but he might do it. He says indeed, that he has a different manner of carrying and holding his Hand from other Persons, that it was his Custom in Conversation to raise his Hand; it may be so to his Footman, but to a Peer of the Kingdom, an Earl of Great Britain, that raising of his Hand did not become him, and was in Point of Law an Affault: Why then, what is the Consequence? Here is a Gentleman, Mr. Francis Annesley, attending Lord Angley, this Gentleman, his Tenant, his Relation and Friend, sees him thus affronted and assaulted, and strikes the Person who threatened to strike him; I do say, that Mr. Kerker thus assaulting Lord Angley, could expect no other Return, than that which Mr. Angley made him. It was incumbent in some measure on Mr. Francis Annesley, even for the Safety of Lord Angley, to do what he did. Was he to wait for this Gentleman's drawing out his Pistol? Did it not seem incumbent on him to prevent this? I beg Leave to say it was, and that he was justifiable in Point of Law; if he had been no Relation or Friend to my Lord, but even a Stranger, and saw him threatened in the manner Mr. Kerker threatened him, he ought to prevent the Quirel likely to ensue between them; and if in so doing, he hurt Mr. Kerker, he is justifiable by the Law. It would be taking up too much of your Time to say more, but for my Part, all Circumstances considered, I am only amazed, that instead of the slight Injury done those Gentlemen, they were not much worse off.

Coming upon the Bench, and may be considered as a Mitigation of the Offence, but not by the Law as a justification of it. I already find that the Jury have determined upon that Affault, upon Mr. Kerker's Evidence, but it appeared from Evidence that Mr. Kerker had assaulted my Lord Angley first, the Jury could not possibly have found that Lord Angley's Guilty. As to Mitigation, that is a matter proper for the Consideration of the Court when they come to give Judgment for the Offence. But as to the Affault of Mr. Francis Annesley on Mr. Kerker, it is quite ground against him by the Evidence of Mr. Kerker, Mr. Kennedy, and Mr. Gossey, and in my Apprehension he is guilty of that Affault. Now, as to the fourth Affault, that on Mr. Kerker Angley, I believe that fourth Indictment may go to the Jury. It appears to me, that the most Part of the Evidence as to that, was principally material for the Consideration of the Court to determine their Discretion, to shew the Nature and General Tendency of this unfortunate Affair. But I say, that as I recollect it, it does not appear upon the Evidence, that any one Person struck, or attempted to strike Mr. James Angley; and before any Words were uttered by Lord Angley, directing the Pursuits of him, there was an Account brought that he was gone off the Sod, and then those Words were spoke by my Lord, *Follow the Son of a Whore, and beat his Brains out*. Mr. Angley galloped away, and falls into a Ditch, and there lay in a very miserable manner; but how that happened is unaccounted for, by the Feet of his Horse slipping into the Ditch; it does not appear that it was by a Stroke given by any body; it does not appear that any one Person did attempt to strike him; that was a Gentleman, that one of the Witnesses said, had not he interposed, would have struck him; but he is out of the Case, and not to come within your Consideration. If you that are concerned for the Crown have any thing to say, proceed.

Mr. Harcourt. We are ready to offer what occurs to us upon this Indictment; and my Lord, I humbly apprehend that this Question is reduced to a very single Point of Law upon the following Facts; that Mr. Kerker being apprehensive of an Intention in Lord Angley and his Company to murder him and all his Friends, desired Mr. Angley, who was his chief Care, to get away as fast as he could. It is given in Evidence that Mr. Angley did so, and also that upon my Lord Angley's hearing that he had left the Field, that he cried out to the People about him, *Pursue him, and tear him limb from limb*. In Consequence whereof, several did pursue, and drove him on full Speed; and Word being brought back to him that he was killed, my Lord approved of it and said, *All was well*. This being the Fact as nearly as I can recollect it, I apprehend the Law will be clearly determined by your Lordship in our favour. Lord Angley, throughout this Evidence, has appeared to have abused this Gentleman, to have assaulted some of his Friends, for which he and some of his Associates are found guilty; here is an Abuse given to this very Gentleman precedent to every thing that happened, here follows an Assault upon two or three of his Friends, and Advice being brought from the Place where the noble Lord and his Associates were, of his bad Intentions to this young Gentleman, for fear the like Fate should attend him, he is desired by one of them to run away or he would be murdered: The Minute my Lord hears he has left the Field, he halloo to all his People after him, to tear him limb from limb, and one of the Pursuers attempts to strike him, but was prevented. This is clearly proved by the Evidence offered to your Lordship, and this being so, then the Question

is, whether my Lord *Angley* is guilty of an Assault upon this Gentleman, who was thrown into the Ditch by his Horse, as he was turning him about to defend himself against the Pursuers? I submit it to your Lordship, whether you won't take the whole Case, both Words, and Facts, and Circumstances, into your Consideration, and then pronounce what the Law is. Why then, it appears that this Gentleman, upon the Pursuit of him, finding the People come up so close to him, turned his Horse so defend himself, and then it appears, that the Horse fell into the Ditch, and upon him, and there he received his Hurt. The Question then is, whether or no Lord *Angley* is a Principal in this Assault or not? Whether he was not the Cause of the Hurt that Mr. *Annesley* received by the Fall of the Horse upon him? I believe no body will deny, but that the Persons who actually pursued and gave Occasion immediately to this Fall, were guilty of an Assault, and also of the Battery and Wounding received by the Fall. There is a Difference in Point of Law between an Assault, a Wounding and a Battery; an Assault is in its Nature of the least Degree of these Kind of Offences. If this Gentleman, who was thus pursued, had happened to be drove into the River *Liff* and drown'd, there I apprehend, every Man that pushed him to the Brink of that River was guilty of his Murder. The Law is clear, that in High Treason and Treasons they are all Principals, and there can be no Accessories in those which are the highest and lowest Offence; the Persons aiding, inciting, in any kind assisting, by Language or overt Act, are all Principals; and if I am present, and encourage or desire a Man to break another's Head, and he does it, I am guilty of that Assault. If the Persons then, who have pursued this poor Gentleman, had been guilty of Murder, in case he had been forced into the River and drown'd, I would be glad to be informed by the Council of the other Side, how it comes about, that the Law should be more tender in determining a Man to be a Principal in Treason, than it does in Cases of Murder; I presume they must allow the contrary, and that there is more Indulgence shewn in favour of Life. And if the Case I put, would have been Murder in the Pursuers, and also in Lord *Angley*, I think the Consequence must be, that he is to be looked upon as a Principal in the Assault, as all Cases of Murder include a Treason; also there are many Mitigations in Cases of Killing, not allowed in an Assault: So that I am at a loss to find how it can be imagined that a Man is not guilty of an Assault, when, if the Person he pursued had been driven into the River and drown'd, he would have been guilty of Murder. If this be the Case of the Principals, pray consider, whether any Distinction in Law, or in Point of Reason, can put Lord *Angley* in a better condition with regard to the Offence than the Persons he prevailed upon to do it. He was the first Person, that stir'd up these Men to pursue, who were the occasion of the Fall into the Ditch; he was the principal Agent, who wrought up their Spirits to execute that unlawful Intention, which he had against him, and approved of what was done, when he heard Mr. *Annesley* was dead. I beg leave to say that every Act they did in pursuance of his Directions, is his Act in Point of Law; and the Law does not separate any of them, but makes them all Principals in Treason. I would suppose, my Lord, that instead of a brutish Mob, I had got a more Brave, a fierce Dog, and halloo'd him at a Gentleman without Provocation, and this Gentleman had leapt into a River to escape from the Dog, and was drown'd; and if it had appear'd I had halloo'd this Dog in order to wound, hurt, or frighten him into this Distress, am not I the Cause and guilty of all the Distress the Dog frighten'd him into, and guilty of this

Murder? And, tho' the Dog did not come so near as to bite him, and that he rather chose to leap into the River and be drown'd, than be mangled by this Dog, I conceive it would be a Case of Murder, and that it would be so, I put another Case: Suppose a Man designedly had scared another Man's Horse with an Intention that he should do some Mischief to the Man that rode him; the Rider is thrown upon this, though the Man never meddles with him, only scares his Horse; if he breaks his Neck in the Fall, is not that Murder? I must humbly insist upon it, that it is, because the Law will not permit any one, either by himself, or others by his Procurement, to do any Act, whereby another's Property or his Life may be in danger or destroyed. Why then, I apprehend, that if my Lord *Angley* had ordered the Men to pursue in such a manner, that they had affrighted this Gentleman's Horse, and that he was unruly, and he had broke his Neck, I look upon it that that was a determinate Murder in Lord *Angley*. If in point of Reason, what I have mentioned has not the weight that I proposed by it, to prove that this was an Assault in consideration of the Law, as much as if my Lord had with his own Hand broke his Head: I will put your Lordship in mind of a determined Case that comes up to the Point in Question, and is this. There was a Man confined above Stairs in a Castle; another Man below sends armed Men up in order to murder him, they get into the Door, and run up the Castle Stairs. As he found them coming up, the Man had not Resolution to stand; he thought he might have some prospect of escaping, by leaping down from the Top of the Castle; he leapt down from the Battlements, and it so happened that he broke his Neck and died: And in that Case I recollect, upon the Determination of the Judges, there was no doubt but that it was clearly Murder in the Man that commanded them, as well as in those, who by their Appearance of Violence, occasioned him to leap down. Here, my Lord, there was no stroke given, no Man came near him, they had not got up to the Place where he was; however, the Man not being of Resolution strong enough, to wait their cutting his Throat, he chose to leap down, and by that lost his Life. Here was no Election left to Mr. *Annesley*, he was thrown down by his Horse. If a Man lets loose a mad Bull, knowing him to be so, with Intent only to frighten People, it is Murder in him if any body is killed. Now, my Lord, as I have mentioned some Cases, which I conceive would be held to be Murder, if they were to be determined by your Lordship; and as I have mentioned others upon my Memory, which have been so determined, and that would make this Fact, had this Gentleman died, Murder in Lord *Angley*; I am at a loss in recalling any Distinction taken in our Law-Books, that any Fact, which would be Murder in case the Person died, shall be extenuated, and said not to be an Assault in case he survived it. I know the Law is quite the contrary, and takes large Strides in Matters of Assault to come at Offenders, to protect the publick Peace, when it will not go so far as to take away the Life of a Man upon a capital Prosecution. I shall only trouble you with this further; that there can be no doubt but that Lord *Angley* gave the Directions I have mention'd, desired them to go and tear him in pieces; it is as certain that People did go and pursue; and it is to be left in the Breast of the Jury, whether that Pursuit was in consequence of my Lord's Directions, or not; and whether it is so natural to believe that this Crowd of People, who don't appear to be any way concern'd, or to have any Ill-will towards Mr. *Annesley*, would have pursued and galled after him, who was galloping away to save his Life, had it not been in pursuance of my Lord's Commands, who had such Influence

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